

## **IC 36-7-4**

### **Chapter 4. Local Planning and Zoning**

#### **IC 36-7-4-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, and 701 of this chapter by P.L.335-1985 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

(2) The addition of sections 613 and 614 of this chapter by P.L.335-1985 does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

(3) The amendments made to sections 214, 503, 504, 506, 509, 510, 511, 601, 602, 603, 604, 605, 606, 610, 612, 711, 712, 801, 802, 1014, and 1020 of this chapter by P.L.220-1986 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.220-1986 had not been enacted.

*As added by P.L.220-2011, SEC.658.*

#### **IC 36-7-4-0.3**

##### **Operation of certain area plan commissions; legalization of certain actions taken after June 30, 1997, and before January 1, 1999**

Sec. 0.3. Notwithstanding the amendments made to section 207 of this chapter by P.L.225-1997, an area plan commission that existed before May 12, 1997, may continue to operate until January 1, 1999, under section 207 of this chapter as it existed before May 12, 1997. Any actions taken after June 30, 1997, and before January 1, 1999, by an area plan commission operating under this section that otherwise comply with the Area Planning Law are legalized and validated.

*As added by P.L.220-2011, SEC.659.*

#### **IC 36-7-4-0.4**

##### **Legalization of acts of certain plan commissions taken after**

**September 30, 1999, and before March 16, 2000**

Sec. 0.4. (a) This section applies to a county plan commission that did not have a township trustee appointed to the plan commission as a member in accordance with IC 36-7-4-208(a)(5) on or after October 1, 1999.

(b) The acts of the plan commission taken after September 30, 1999, and before March 16, 2000, are legalized.

*As added by P.L.220-2011, SEC.660.*

**IC 36-7-4-100**

**100 Series—Applicability and rules of construction**

Sec. 100. This series (sections 100 through 199 of this chapter) may be cited as follows: 100 SERIES—APPLICABILITY AND RULES OF CONSTRUCTION.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-101**

**"Advisory planning law" defined**

Sec. 101. The "advisory planning law" consists of those parts of this chapter that are applicable to advisory planning. Sections and subsections of this chapter with headings that include "ADVISORY" apply to advisory planning. In addition, sections and subsections of this chapter without headings apply to advisory planning as well as area planning and metropolitan development.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-102**

**"Area planning law" defined**

Sec. 102. The "area planning law" consists of those parts of this chapter that are applicable to area planning. Sections and subsections of this chapter with headings that include "AREA" apply to area planning. In addition, sections and subsections of this chapter without headings apply to area planning as well as advisory planning and metropolitan development.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-103**

**"Metropolitan development law" defined**

Sec. 103. The "metropolitan development law" consists of those parts of this chapter that are applicable to metropolitan development. Sections and subsections of this chapter with headings that include "METRO" apply to metropolitan development. In addition, sections and subsections of this chapter without headings apply to metropolitan development as well as area planning and advisory planning.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-104**

**"Series" defined**

Sec. 104. A citation in this chapter to the term "series", preceded by a numerical designation and two (2) zeroes, shall be construed as a reference to all the sections of this chapter (including the advisory planning law, the area planning law, and the metropolitan development law) that have that same numerical designation.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-105****Repealed**

*(Repealed by Acts 1981, P.L.310, SEC.94.)*

**IC 36-7-4-106****Prior law construed**

Sec. 106. If a provision of the prior advisory planning laws, area planning laws, township joinder laws, or metropolitan development laws has been replaced in the same form or in a restated form, by a provision of this chapter, then a citation to the provision of the prior law shall be construed as a citation to the corresponding provision of this chapter.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-107****Reorganized units; exercise of powers by resolution**

Sec. 107. If a provision of this chapter requires a power to be exercised by adoption of an ordinance, a unit described in IC 36-7-2-1(b) shall exercise the power by adoption of a resolution.

*As added by P.L.202-2013, SEC.33.*

**IC 36-7-4-200****200 Series—Establishment and membership of commission**

Sec. 200. This series (sections 200 through 299 of this chapter) may be cited as follows: 200 SERIES—COMMISSION ESTABLISHMENT AND MEMBERSHIP.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-201****Manner of exercising planning and zoning powers; purpose; countywide planning and zoning entities; county containing consolidated city**

Sec. 201. (a) For purposes of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers in Indiana, including the issuance of permits under IC 8-1-32.3 (except as otherwise provided in IC 8-1-32.3), must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

(1) that highway systems be carefully planned;

- (2) that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;
- (3) that the needs of agriculture, forestry, industry, and business be recognized in future growth;
- (4) that residential areas provide healthful surroundings for family life; and
- (5) that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

(c) Furthermore, municipalities and counties may cooperatively establish single and unified planning and zoning entities to carry out the purpose of this chapter on a countywide basis.

(d) METRO. Expanding urbanization in each county having a consolidated city has created problems that have made the unification of planning and zoning functions a necessity to insure the health, safety, morals, economic development, and general welfare of the county. To accomplish this unification, a single planning and zoning authority is established for the county.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.5; P.L.192-1984, SEC.3; P.L.82-2005, SEC.7; P.L.145-2015, SEC.7.*

#### **IC 36-7-4-201.1**

##### **Zoning ordinances; satellite receiver antennas and other types of antennas**

Sec. 201.1. A local zoning ordinance that addresses a satellite receiver antenna and another type of antenna is void unless the zoning ordinance:

- (1) has a reasonable and clearly defined health, safety, or aesthetic objective;
- (2) does not:
  - (A) impose an unreasonable restriction on or prevent the reception of satellite signals by satellite receiver antennas; or
  - (B) impose costs on the users of satellite receiver antennas that are excessive in comparison to the purchase and installation cost of the satellite receiver antennas; and
- (3) does not prohibit installation of a satellite receiver antenna that is not more than two (2) feet in diameter.

*As added by P.L.167-1994, SEC.1.*

#### **IC 36-7-4-202**

##### **Establishment; authorization**

Sec. 202. (a) ADVISORY. The legislative body of a county or municipality may establish by ordinance an advisory plan commission. In addition, in a county having a population of:

- (1) more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000); or
- (2) more than one hundred fifteen thousand (115,000) but less

than one hundred twenty-five thousand (125,000); the legislative bodies of that county and of the city having the largest population in that county may establish by identical ordinances a metropolitan plan commission as a department of county government. These ordinances must specify the legal name of the commission for purposes of section 404(a) of this chapter.

(b) AREA. There may be established in each county an area planning department in the county government, having:

- (1) an area plan commission;
- (2) an area board of zoning appeals;
- (3) an executive director; and
- (4) such staff as the area plan commission considers necessary.

Each municipality and each county desiring to participate in the establishment of a planning department may adopt an ordinance adopting the area planning law, fix a date for the establishment of the planning department, and provide for the appointment of its representatives to the commission. When a municipality or a county adopts such an ordinance, it shall certify a copy of the ordinance to each legislative body within the county. When a county and at least one (1) municipality within the county each adopt an ordinance adopting the area planning law and fix a date for the establishment of the department, the legislative body of the county shall establish the planning department.

(c) METRO. A metropolitan development commission is established in the department of metropolitan development of the consolidated city. The legislative body of the consolidated city may adopt ordinances to regulate the following:

- (1) The time that the commission holds its meetings.
- (2) The voting procedures of the commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.12-1992, SEC.163; P.L.164-1995, SEC.15; P.L.170-2002, SEC.152; P.L.119-2012, SEC.193.*

## **IC 36-7-4-202.5**

### **Reorganized units; adoption of advisory plan commission**

Sec. 202.5. (a) ADVISORY. Notwithstanding any other law, the legislative body of a unit described in IC 36-7-2-1(b) may establish by resolution an advisory plan commission.

(b) ADVISORY. If an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter:

- (1) the advisory plan commission of the unit shall exercise the planning and zoning functions within the unit;
- (2) the advisory plan commission of the unit may not exercise planning and zoning functions within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5);

(3) the county plan commission may not exercise planning and zoning functions within the unit; and

(4) except as provided in subdivision (2), a municipal plan commission of a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) may not exercise planning and zoning functions within the unit.

Notwithstanding any other law, if a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) annexes territory within a unit described in IC 36-7-2-1(b) after the unit has established an advisory plan commission under this section, the municipal plan commission of that municipality may not exercise planning and zoning functions within that annexed territory.

(c) ADVISORY. Except as specifically provided in this chapter, an advisory plan commission established under this section by a unit described in IC 36-7-2-1(b) shall exercise the planning and zoning functions within the unit in the same manner that a municipal plan commission established under this chapter exercises planning and zoning functions for a municipality.

(d) ADVISORY. Notwithstanding any other provision, if an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b), the legislative body of the unit shall, by resolution or in the unit's plan of reorganization under IC 36-1.5, determine:

(1) the number of members to be appointed to the unit's advisory plan commission;

(2) the person or entity that shall appoint or remove those members;

(3) any required qualifications for those members;

(4) the terms of those members; and

(5) whether any members or advisory members shall be appointed by the county in which the unit is located or by a municipality located within the unit.

*As added by P.L.202-2013, SEC.34.*

### **IC 36-7-4-203**

#### **Establishment; exercise of planning and zoning authority**

Sec. 203. (a) ADVISORY. After a metropolitan plan commission is established, it shall exercise exclusively the planning and zoning functions of the county and of the second class city, and the separate planning and zoning functions of the county plan commission and the city plan commission cease.

(b) AREA. After the planning department is established and the participating legislative bodies have adopted a zoning ordinance, the planning department shall exercise exclusively the planning and zoning functions of the county and of the participating municipalities, except as provided in section 901(i) of this chapter. Where other statutes confer planning and zoning authority on a participating municipality or a county, their plan commissions shall

continue to exercise that authority until such time as the planning department is established and the participating legislative bodies adopt a zoning ordinance.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.6; P.L.126-2011, SEC.5.*

#### **IC 36-7-4-204**

##### **Establishment; participation by other municipalities within county**

Sec. 204. AREA. After the planning department is established, other municipalities within the county may adopt ordinances adopting the area planning law and provide for the appointment of their representatives to the area plan commission. In such a case, the membership of the commission shall be increased according to the formula provided in sections 207, 208, 209, and 211 of this chapter and the authority of a municipal plan commission and municipal board of zoning appeals ceases, except as provided in section 901(i) of this chapter, as of the time specified in that ordinance. The composition of any such municipal board of zoning appeals, or of any such board later organized, under the advisory planning law, must conform with that law, except that those members of such a board to be appointed from the municipal plan commission shall instead be appointed from the area plan commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.126-2011, SEC.6.*

#### **IC 36-7-4-205**

##### **Establishment; extent of territorial authority of comprehensive plan; inclusion of contiguous unincorporated area; fire protection territories; incorporation of new towns in county**

Sec. 205. (a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development of the municipality. For comprehensive plans adopted after July 1, 1999, if:

- (1) the municipality provides municipal services to the contiguous unincorporated area; or
- (2) the municipal plan commission obtains the approval of the county legislative body of each affected county;

the municipal plan commission may provide in the comprehensive plan for the development of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality. For purposes of this section, participation of a municipality in a fire protection territory established under IC 36-8-19 that includes unincorporated areas contiguous to the municipality may not be treated as providing municipal services to the contiguous unincorporated areas.

- (b) ADVISORY. Except as limited by the boundaries of

unincorporated areas subject to the jurisdiction of other municipal plan commissions, an area designated under this section may include any part of the contiguous unincorporated area within two (2) miles from the corporate boundaries of the municipality. However, the following applies to the designation of an area under this section:

(1) If the corporate boundaries of the municipality or the boundaries of that contiguous unincorporated area include any part of the public waters or shoreline of a lake (which lies wholly within Indiana), the designated area may also include:

(A) any part of those public waters and shoreline of the lake; and

(B) any land area within two thousand five hundred (2,500) feet from that shoreline.

(2) This subdivision applies to a municipality that annexes noncontiguous territory under IC 36-4-3-4(a)(2) or IC 36-4-3-4(a)(3). The boundaries of the noncontiguous territory (including territory that is enlarged under subdivision IC 36-4-3-4(a)(2)(B) for the use of the wastewater treatment facility or water treatment facility) may not be considered a part of the corporate boundaries of the municipality for purposes of designating an area under this section.

(c) ADVISORY. Before exercising their rights, powers, and duties of the advisory planning law with respect to an area designated under this section, a municipal plan commission must file, with the recorder of the county in which the municipality is located, a description or map defining the limits of that area. If the commission revises the limits, it shall file, with the recorder, a revised description or map defining those revised limits.

(d) ADVISORY. If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

(e) ADVISORY. If the legislative body of a county adopts a comprehensive plan and ordinance covering the unincorporated areas of the county, a municipal plan commission may not exercise jurisdiction, as provided in this section, over any part of that unincorporated area unless it is authorized by ordinance of the legislative body of the county. This ordinance may be initiated by the



county legislative body or by petition duly signed and presented to the county auditor by:

- (1) not less than fifty (50) property owners residing in the area involved in the petition;
- (2) the county plan commission; or
- (3) the municipal plan commission.

Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area. The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.

(f) **ADVISORY.** Each municipal plan commission in a municipality located in a county having:

- (1) a population of less than ninety-five thousand (95,000); and
- (2) a county plan commission that has adopted, in accord with the advisory planning law, a comprehensive plan and ordinance covering the unincorporated areas of the county;

may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the area within two (2) miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction, if the municipality is providing municipal services to the area. Within sixty (60) days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection. If the municipality is not providing municipal services to the area, the municipal plan commission must obtain the approval of the county legislative body of each affected county before exercising jurisdiction.

(g) **AREA.** Wherever in the area planning law authority is conferred to establish a comprehensive plan or an ordinance for its enforcement, the authority applies everywhere:

- (1) within the county that is outside the municipalities; and
- (2) within each participating municipality.

(h) **ADVISORY—AREA.** Whenever a new town is incorporated in a county having a county plan commission or an area plan commission, that plan commission and its board of zoning appeals

shall continue to exercise territorial jurisdiction within the town until the effective date of a town ordinance:

- (1) establishing an advisory plan commission under section 202(a) of this chapter; or
- (2) adopting the area planning law under section 202(b) or 204 of this chapter.

Beginning on that effective date, the planning and zoning functions of the town shall be exercised under the advisory planning law or area planning law, as the case may be.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.1, SEC.61; P.L.216-1999, SEC.1; P.L.172-2011, SEC.143; P.L.207-2014, SEC.4.*

#### **IC 36-7-4-206**

##### **Establishment; extent of territorial authority of nonparticipating municipality**

Sec. 206. AREA. After the planning department is established, a nonparticipating municipality may not exercise planning and zoning powers outside its corporate boundaries.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-207**

##### **Membership of commission; nonvoting adviser**

Sec. 207. (a) ADVISORY. In a city having a park board and a city civil engineer, the city plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the city legislative body from its membership.
- (2) One (1) member appointed by the park board from its membership.
- (3) One (1) member or designated representative appointed by the city works board.
- (4) The city civil engineer or a qualified assistant appointed by the city civil engineer.
- (5) Five (5) citizen members, of whom no more than three (3) may be of the same political party, appointed by the city executive.

(b) ADVISORY. If a city lacks either a park board or a city civil engineer, or both, subsection (a) does not apply. In such a city or in any town, the municipal plan commission consists of seven (7) members, as follows:

- (1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.
- (2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban

populations, representation on the area plan commission is determined as follows:

- (1) Seven (7) representatives from each city having a population of more than one hundred five thousand (105,000).
- (2) Six (6) representatives from each city having a population of not less than seventy thousand (70,000) nor more than one hundred five thousand (105,000).
- (3) Five (5) representatives from each city having a population of not less than thirty-five thousand (35,000) but less than seventy thousand (70,000).
- (4) Four (4) representatives from each city having a population of not less than twenty thousand (20,000) but less than thirty-five thousand (35,000).
- (5) Three (3) representatives from each city having a population of not less than ten thousand (10,000) but less than twenty thousand (20,000).
- (6) Two (2) representatives from each city having a population of less than ten thousand (10,000).
- (7) One (1) representative from each town having a population of more than two thousand one hundred (2,100), and one (1) representative from each town having a population of two thousand one hundred (2,100) or less that had a representative before January 1, 1979.
- (8) Such representatives from towns having a population of not more than two thousand one hundred (2,100) as are provided for in section 210 of this chapter.
- (9) Six (6) county representatives if the total number of municipal representatives in the county is an odd number, or five (5) county representatives if the total number of municipal representatives is an even number.

(d) METRO. The metropolitan development commission consists of nine (9) citizen members, as follows:

- (1) Five (5) members, of whom no more than three (3) may be of the same political party, appointed by the executive of the consolidated city.
- (2) Four (4) members, of whom no more than two (2) may be of the same political party, appointed by the legislative body of the consolidated city.

(e) METRO. The legislative body of the consolidated city shall appoint an individual to serve as a nonvoting adviser to the metropolitan development commission when the commission is acting as the redevelopment commission of the consolidated city under IC 36-7-15.1. If the duties of the metropolitan development commission under IC 36-7-15.1 are transferred to another entity under IC 36-3-4-23, the individual appointed under this subsection shall serve as a nonvoting adviser to that entity. A nonvoting adviser appointed under this subsection:

- (1) must also be a member of the school board of a school

corporation that includes all or part of the territory of the consolidated city;

(2) is not considered a member of the metropolitan development commission for purposes of IC 36-7-15.1 but is entitled to attend and participate in the proceedings of all meetings of the metropolitan development commission (or any successor entity designated under IC 36-3-4-23) when it is acting as a redevelopment commission under IC 36-7-15.1;

(3) is not entitled to a salary, per diem, or reimbursement of expenses;

(4) serves for a term of two (2) years and until a successor is appointed; and

(5) serves at the pleasure of the legislative body of the consolidated city.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.44, SEC.53; Acts 1982, P.L.1, SEC.62; P.L.192-1984, SEC.4; P.L.336-1985, SEC.1; P.L.164-1995, SEC.16; P.L.225-1997, SEC.1; P.L.32-2004, SEC.1; P.L.146-2008, SEC.718; P.L.266-2013, SEC.13.*

#### **IC 36-7-4-208**

##### **Membership of commission; county and metropolitan numbers**

Sec. 208. (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county surveyor or the county surveyor's designee.

(4) The county agricultural extension educator. However, if the county does not have a county agricultural extension educator, the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. Each of the four (4) members must be:

- (i) a resident of an unincorporated area of the county; or
- (ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However, at least two (2) of the citizen members must be residents of the unincorporated area of the county. Also one (1) township trustee, who must be a resident of an unincorporated area of

the county appointed by the county executive upon the recommendation of the township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:

- (i) a resident of an unincorporated area of the county; or
- (ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least three (3) members must be residents of the unincorporated area of the county.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county legislative body from its membership.

(2) One (1) member appointed by the second class city legislative body from its membership.

(3) Three (3) citizen members who:

(A) reside in an unincorporated area of the county; or

(B) reside in the county and also own real property located in whole or in part in an unincorporated area of the county; of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.

(4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from

its membership.

(3) A representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county executive.

(6) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.7; P.L.354-1983, SEC.1; P.L.40-1993, SEC.67; P.L.226-1997, SEC.1; P.L.216-1999, SEC.2; P.L.103-2000, SEC.1; P.L.276-2001, SEC.10; P.L.173-2003, SEC.30; P.L.32-2004, SEC.2; P.L.126-2011, SEC.7; P.L.233-2015, SEC.339.*

#### **IC 36-7-4-209**

##### **Membership of commission; representatives for a municipality; numbers; appointments**

Sec. 209. (a) AREA. When the number of representatives for a municipality is two (2), one (1) is a member of the municipal legislative body appointed by the legislative body and the other is a citizen member appointed by the municipal executive.

(b) AREA. When the number of representatives for a municipality is three (3), one (1) is a member of the legislative body appointed by the legislative body and two (2) are citizen members appointed by the executive.

(c) AREA. When the number of representatives for a municipality is four (4), one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and

two (2) are citizen members appointed by the executive.

(d) AREA. When the number of representatives for a municipality is five (5) or more, one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and the remainder are citizen members appointed by the executive. *As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.226-1997, SEC.2; P.L.126-2011, SEC.8.*

#### **IC 36-7-4-210**

##### **Membership of commission; advisory council on town affairs**

Sec. 210. (a) AREA. In a county where there are two (2) or more towns having a population of not more than two thousand one hundred (2,100) neither of which has a representative on the area plan commission under section 207(c)(7) of this chapter that are participating in an area planning department, there is established an advisory council on town affairs. Each participating legislative body of such a town shall select one (1) of its members as its representative on the advisory council. The advisory council shall meet as soon as possible after the establishment of the planning department. It shall meet in the town hall of the participating town having the largest population, on the call of the representative of that town, who shall act as chairman of the first meeting. Thereafter, the council shall elect its own chairman.

(b) AREA. The advisory council shall at its first meeting select from its membership an appropriate number of voting representatives to the area plan commission. If the advisory council is composed of five (5) or less, it is entitled to one (1) voting representative on the area plan commission. If the advisory council is composed of more than five (5), it is entitled to two (2) voting representatives on the area plan commission.

(c) AREA. The chairman and the representatives on the advisory council shall be elected for one (1) year terms, terminating at the end of the year.

(d) AREA. If there are not any cities located within a county, then the town having the largest population and participating in the planning department in the county shall select a citizen member to serve on the area plan commission. The legislative body of that town shall appoint that member as prescribed by section 218(e) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.8; Acts 1982, P.L.1, SEC.63.*

#### **IC 36-7-4-211**

##### **Membership of commission; changes**

Sec. 211. (a) AREA. Notwithstanding any other provision of the area planning law, the representation on any area plan commission may be changed by a similar ordinance adopted by the legislative

body of each unit that is a participant in a planning department or by the legislative body of each unit that proposes to form a planning department.

(b) AREA. Each ordinance adopted under this section must provide for at least one (1) representative from each unit that is a participant in the planning department.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.9.*

#### **IC 36-7-4-212**

##### **Membership of commission; certification**

Sec. 212. ADVISORY. The clerk of the municipal legislative body and the secretary of the park board shall certify members appointed by their respective bodies, and the executive shall certify his appointments. The certificates shall be sent to and made a part of the records of the municipal plan commission.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-213**

##### **Membership of commission; advisory members**

Sec. 213. ADVISORY. If a municipality having a municipal plan commission is located in a county that has a county plan commission:

- (1) a designated representative of the county plan commission shall serve as an advisory member of the municipal plan commission; and
- (2) a designated representative of the municipal plan commission shall serve as an advisory member of the county plan commission.

Each advisory member has all the privileges of membership, except the right to vote.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-214**

##### **Membership of commission; additional members required for unincorporated jurisdictional area**

Sec. 214. (a) ADVISORY. When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 of the advisory planning law, the executive of the county in which the unincorporated area is located shall appoint two (2) additional citizen members to the municipal plan commission. The citizen members must:

- (1) be residents of:
  - (A) the unincorporated area; or
  - (B) the county, and must also be owners of real property located in whole or in part within the unincorporated area; and
- (2) not be of the same political party.



However, at least one (1) of the members must be a resident of the unincorporated area.

(b) ADVISORY. Initially, one (1) member under subsection (a) shall be appointed for a term of one (1) year and the other for a term of four (4) years. Thereafter, each appointment is for a term of four (4) years. The additional citizen members are entitled to participate and vote in all deliberations of the municipal plan commission.

(c) ADVISORY. If the unincorporated area referred to in subsection (a) lies in two (2) counties, the executive of each of those counties shall appoint one (1) of the additional citizen members. The executive of the county having the larger proportion of the unincorporated area shall appoint its member first, and the executive of the other county shall then appoint its member, who must not be of the same political party.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.7-1983, SEC.37; P.L.220-1986, SEC.8; P.L.126-2011, SEC.9; P.L.6-2012, SEC.242.*

#### **IC 36-7-4-215**

##### **Membership of commission; additional members allowed for unincorporated jurisdictional area**

Sec. 215. ADVISORY. In addition to the requirements of section 214 of this chapter, the executive of the county may also appoint as members of a town plan commission additional representatives from the unincorporated jurisdictional area, if the executive believes the additional representation is justifiable. The number of appointments shall be determined as follows:

(1) Two (2) citizen members, if the population of the jurisdictional area appears to be at least fifty percent (50%) but not more than one hundred percent (100%) of the population of the town itself.

(2) Four (4) citizen members, if the population of the jurisdictional area appears to be greater than that of the town itself.

These additional members must have the same qualifications and are entitled to the same terms and privileges as prescribed for the additional members appointed under section 214 of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.7-1983, SEC.38.*

#### **IC 36-7-4-216**

##### **Membership of commission; qualifications of citizen members**

Sec. 216. (a) Each citizen member shall be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area.

(b) A citizen member may not hold:

- (1) an elected office (as defined in IC 3-5-2-17); or
- (2) any other appointed office in municipal, county, or state government;

except for membership on the board of zoning appeals as required by section 902 of this chapter and, in the case of an area plan commission, membership on the body from which the member must be appointed under this series.

(c) Subject to subsection (d), a citizen member must meet one (1) of the following requirements:

- (1) The member must be a resident of the jurisdictional area of the plan commission. The member may also be required by statute to reside within an unincorporated area of the jurisdictional area of the plan commission.
- (2) The member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the plan commission. The member may also be required by statute to own real property within an unincorporated area of the jurisdictional area of the plan commission.

(d) At least a majority of the total number of citizen members appointed to a plan commission must be residents of the jurisdictional area of the plan commission. The commission shall determine whether a citizen member meets all applicable residency requirements for appointment in accordance with uniform rules prescribed by the commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.10; P.L.2-1989, SEC.25; P.L.126-2011, SEC.10.*

#### **IC 36-7-4-217**

##### **Membership of commission; term of certain appointees**

Sec. 217. ADVISORY—AREA. The term of office of a member (who is appointed from the membership of a legislative body, a park board, or the advisory council on town affairs) is coextensive with the member's term of office on that body, board, or council, unless that body, board, or council appoints, at its first regular meeting in any year, another to serve as its representative.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-218**

##### **Membership of commission; terms and removal of citizen members**

Sec. 218. (a) When an initial term of office of a citizen member expires, each new appointment of a citizen member is:

- (1) for a term of four (4) years (in the case of a municipal, county, or area plan commission);
- (2) for a term of three (3) years (in the case of a metropolitan plan commission); or
- (3) for a term of one (1), two (2), or three (3) years, as designated by the appointing authority (in the case of the

metropolitan development commission).

A member serves until his successor is appointed and qualified. A member is eligible for reappointment.

(b) ADVISORY. Upon the establishment of a nine (9) member municipal plan commission, the citizen members shall initially be appointed for the following terms of office:

- (1) One (1) for a term of two (2) years.
- (2) Two (2) for a term of three (3) years.
- (3) Two (2) for a term of four (4) years.

Upon the establishment of a seven (7) member municipal plan commission, two (2) citizen members shall initially be appointed for a term of three (3) years and two (2) shall initially be appointed for a term of four (4) years. Each member's term expires on the first Monday of January of the second, third, or fourth year, respectively, after the year of the member's appointment.

(c) ADVISORY. Upon the establishment of a county plan commission, the citizen members shall initially be appointed for the following terms of office:

- (1) One (1) for a term of one (1) year.
- (2) One (1) for a term of two (2) years.
- (3) One (1) for a term of three (3) years.
- (4) Two (2) for a term of four (4) years.

Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(d) ADVISORY. Upon the establishment of a metropolitan plan commission, the citizen members shall initially be appointed for the following terms of office:

- (1) Three (3) for a term of one (1) year, one (1) appointed by the county legislative body and two (2) by the city executive.
- (2) Two (2) for a term of two (2) years, one (1) by each appointing authority.
- (3) Two (2) for a term of three (3) years, one (1) by each appointing authority.

(e) AREA. If there is one (1) citizen member on the area plan commission, his initial term of office is one (1) year. If there are two (2) citizen members, one (1) shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. If there are three (3) or more citizen members, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and any remainder for a term of four (4) years. Each member's term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(f) ADVISORY—AREA. The appointing authority may remove a member from the plan commission for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his residence address. A member

who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

(g) METRO. The appointing authority may remove a citizen member from the metropolitan development commission. The appointing authority must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.11; P.L.192-1984, SEC.5.*

#### **IC 36-7-4-219**

##### **Repealed**

*(Repealed by Acts 1981, P.L.310, SEC.94.)*

#### **IC 36-7-4-220**

##### **Membership of commission; vacancies; appointment of alternate members**

Sec. 220. (a) If a vacancy occurs among the plan commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member. The appointing authority may also appoint an alternate member to participate with the commission in a hearing or decision if the regular member appointed by the appointing authority has a disqualification under section 223(c) of this chapter. An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.

(b) If a vacancy occurs in the office of the county surveyor while the county surveyor is serving on the plan commission, then the county engineer shall participate with the plan commission during the time the office of the county surveyor is vacant. The county engineer has all the powers and duties of a regular member while participating under this subsection.

(c) An appointed member who misses three (3) consecutive regular meetings of the plan commission may be treated as if the member had resigned, at the discretion of the appointing authority.  
*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.12; P.L.23-1991, SEC.39; P.L.126-2011, SEC.11.*

#### **IC 36-7-4-221**

##### **Repealed**

*(Repealed by Acts 1981, P.L.310, SEC.94.)*

#### **IC 36-7-4-222**

##### **Membership of commission; expenses**

Sec. 222. If a plan commission determines that it is necessary or

desirable for members or employees to join a professional organization or to attend a conference or interview dealing with planning or related problems, the commission may pay the applicable membership fees and all actual expenses of the members or employees, if that amount has been appropriated by the fiscal body of the unit.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.13; P.L.192-1984, SEC.6.*

#### **IC 36-7-4-222.5**

##### **Plan commission members belonging to county executive or fiscal bodies; mileage and compensation**

Sec. 222.5. Notwithstanding IC 36-2-7-2, a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor who is also a member of a plan commission is entitled to receive the following:

- (1) A sum for mileage for each mile necessarily traveled while performing the duties of a plan commission member in an amount determined by the county fiscal body.
- (2) A sum for compensation for services as a member of the plan commission in an amount that the county fiscal body may determine for attendance at meetings of the plan commission.

*As added by P.L.356-1989(ss), SEC.1. Amended by P.L.154-1993, SEC.3; P.L.10-1997, SEC.34.*

#### **IC 36-7-4-223**

##### **Membership of commission; conflict of interest; disqualification**

Sec. 223. (a) This section does not apply to the preparation or adoption of a comprehensive plan under the 500 series of this chapter.

(b) A member of a plan commission or a legislative body is disqualified and may not participate as a member of the plan commission or legislative body in a hearing or recommendation of that commission or body concerning a legislative act as described in section 1016 of this chapter in which the member has a direct or indirect financial interest. The commission or body shall enter in its records the fact that its member has such a disqualification.

(c) A member of a plan commission is disqualified and may not participate in a hearing of that commission concerning a zoning decision as described in section 1016 of this chapter if:

- (1) the member is biased or prejudiced or otherwise unable to be impartial; or
- (2) the member has a direct or indirect financial interest in the outcome of the zoning decision.

(d) The plan commission shall enter in the plan commission's records:

- (1) the fact that a regular member has a disqualification under subsection (c); and

(2) the name of the alternate member, if any, who participates in the hearing in place of the regular member.

(e) A member of a plan commission or a legislative body may not directly or personally represent another person in a hearing before that commission or body concerning a zoning decision or a legislative act.

(f) A member of a plan commission may not receive any mileage or compensation under section 222.5 of this chapter for attendance at a meeting if the member is disqualified under this section from participating in the entire meeting.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.14; P.L.154-1993, SEC.4; P.L.126-2011, SEC.12.*

### **IC 36-7-4-300**

#### **300 Series—Organization of commission**

Sec. 300. This series (sections 300 through 399 of this chapter) may be cited as follows: 300 SERIES—COMMISSION ORGANIZATION.

*As added by Acts 1981, P.L.309, SEC.23.*

### **IC 36-7-4-301**

#### **Organization; quorum**

Sec. 301. A quorum consists of a majority of the entire membership of the plan commission, who are qualified by this chapter to vote.

*As added by Acts 1981, P.L.309, SEC.23.*

### **IC 36-7-4-302**

#### **Organization; official action**

Sec. 302. (a) ADVISORY—AREA. Action of a plan commission is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the plan commission.

(b) METRO. Action of the metropolitan development commission is not official, unless it is authorized, at a regular or special meeting, by:

- (1) at least six (6) members, when at least ten (10) members are present at the meeting;
- (2) at least five (5) members, when eight (8) or nine (9) members are present at the meeting; or
- (3) at least four (4) members, when fewer than eight (8) members are present at the meeting.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.212, SEC.1; P.L.192-1984, SEC.7; P.L.164-1995, SEC.17.*

### **IC 36-7-4-303**

#### **Organization; president and vice president**

Sec. 303. At its first regular meeting in each year, the plan commission shall elect from its members a president and a vice

president. The vice president may act as president of the plan commission during the absence or disability of the president.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-304**

##### **Organization; secretary**

Sec. 304. The plan commission may appoint and fix the duties of a secretary, who is not required to be a member of the commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.15.*

#### **IC 36-7-4-305**

##### **Organization; offices and property**

Sec. 305. (a) ADVISORY. The municipality or the county shall provide suitable offices for the holding of advisory plan commission meetings and for preserving the plans, maps, accounts, and other documents of the commission.

(b) AREA. After the establishment of the planning department, the county plan commission and participating municipal plan commissions shall transfer their property to the planning department.

(c) AREA. Except as may be necessary for the exercise of the powers reserved to municipal boards of zoning appeals by the 900 series of this chapter, all ordinances, maps, reports, minute books, documents, and correspondence of any municipal or county plan commission or board of zoning appeals within the jurisdiction of a planning department shall be made available to or transferred to the plan commission on its written request. The plan commission shall procure suitable offices for the conduct of its work and the work of the planning department.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.192-1984, SEC.8.*

#### **IC 36-7-4-306**

##### **Organization; regular meetings and minutes**

Sec. 306. The plan commission shall fix the time for holding regular meetings each month or as necessary. The commission shall keep minutes of its meetings. The minutes of commission meetings and all records shall be filed in the office of the commission and are public records.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.16.*

#### **IC 36-7-4-307**

##### **Organization; special meetings**

Sec. 307. Special meetings of a plan commission may be called by the president or by two (2) members of the commission upon written request to the secretary. The secretary shall send to all members, at least three (3) days before the special meeting, a written notice fixing

the time and place of the meeting. Written notice of a special meeting is not required if:

- (1) the date, time, and place of a special meeting are fixed in a regular meeting; and
- (2) all members of the commission are present at that regular meeting.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.17.*

#### **IC 36-7-4-308**

##### **Organization; appropriations**

Sec. 308. (a) ADVISORY. After a legislative body has adopted an ordinance establishing a municipal or county plan commission, the fiscal body of the municipality or the county, as the case may be, may make appropriations to carry out the duties of the commission.

(b) ADVISORY. After a metropolitan plan commission is established, the commission shall use all amounts previously appropriated to, but unexpended by, the county plan commission and the second class city plan commission without any further appropriation or transfer. Then the county fiscal body shall appropriate all necessary amounts for the use of the commission, but the city legislative body may appropriate additional amounts for the use of the commission. These amounts shall be deposited with the county treasurer in a fund to be known as the metropolitan planning fund.

(c) AREA. After the planning department is established, the county fiscal body shall appropriate and make available to the planning department an amount equal to three cents (\$.03) per person per month for each person in the county's population. This amount is to finance the planning department's operation from its establishment until appropriations are available to it through regular county budget and appropriation procedures. The county fiscal body shall appropriate sufficient amounts to the planning department to insure the continued functioning of the planning department within the participating units. This appropriation shall be made in conformity with the fiscal body's policy regarding the operating budgets of the various divisions of county government.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-309**

##### **Organization; expenditures**

Sec. 309. ADVISORY—AREA. Each plan commission may expend, in accord with applicable municipal or county fiscal procedures, all amounts appropriated to it for the purposes and activities authorized by this chapter. In the case of a metropolitan plan commission, at the end of each fiscal year, any unexpended part of the metropolitan planning fund appropriated by the county reverts to the county general fund, and any unexpended part appropriated by



the second class city reverts to the city general fund.  
*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-310**

##### **Organization; gifts and grants**

Sec. 310. (a) A municipality (in the case of a municipal plan commission or the metropolitan development commission) or a county (in the case of a county plan commission, a metropolitan plan commission, or an area plan commission) may accept gifts, donations, and grants from private or governmental sources for advisory plan commission purposes or planning department purposes, as the case may be.

(b) Any money so accepted shall be deposited with the municipality or the county, as the case may be, in a special nonreverting plan commission fund to be available for expenditures by the plan commission for the purpose designated by the source. The fiscal officer of the municipality or the county shall draw warrants against the special nonreverting fund only on vouchers signed by the president and secretary of the commission.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-311**

##### **Organization; staff and services; executive director; compensation**

Sec. 311. (a) ADVISORY. The advisory plan commission may appoint, prescribe the duties, and fix the compensation of such employees as are necessary for the discharge of the duties of the commission. This compensation must be in conformity with salaries and compensation fixed up to that time by the fiscal body of the municipality or county, as the case may be. The commission may contract for special or temporary services and any professional counsel.

(b) AREA. The area plan commission shall appoint an executive director for the planning department and fix the director's compensation. To be qualified for the position, the executive director must have training and experience in the field of planning and zoning. The commission may not give any consideration to political affiliation in the appointment of the executive director.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.18; P.L.260-1993, SEC.1; P.L.165-2003, SEC.3.*

#### **IC 36-7-4-312**

##### **Organization; duties of executive director**

Sec. 312. AREA. Under the direction of the area plan commission, the executive director shall:

- (1) propose annually a plan for the operation of the planning department;
- (2) administer the plan as approved by the commission;
- (3) supervise the general administration of the planning

department;

(4) keep the records of the planning department and be responsible for the custody and preservation of all papers and documents of the planning department;

(5) subject to the approval of the commission, appoint and remove the employees of the planning department, according to the standards and qualifications fixed by the commission and without regard to political affiliation;

(6) prepare and present to the commission an annual report; and

(7) perform such other duties as the commission may direct.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-400**

##### **400 Series—Duties and powers of commission**

Sec. 400. This series (sections 400 through 499 of this chapter) may be cited as follows: 400 SERIES—COMMISSION DUTIES AND POWERS.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-401**

##### **Duties; advisory planning; area planning**

Sec. 401. (a) Each plan commission shall:

(1) supervise, and make rules for, the administration of the affairs of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission or a metropolitan development commission);

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep a complete record of all the departmental proceedings;

(4) record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission or the metropolitan development commission);

(5) prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter;

(6) adopt a seal; and

(7) certify to all official acts.

(b) ADVISORY—AREA. Each plan commission shall:

(1) supervise the fiscal affairs of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission); and

(2) prepare and submit an annual budget in the same manner as other departments of county or municipal government, as the case may be, and be limited in all expenditures to the provisions

made for the expenditures by the fiscal body of the county or municipality.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-402**

##### **Duties; employees; hearings**

Sec. 402. (a) **ADVISORY.** Each advisory plan commission shall prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the commission, which compensation must conform to salaries and compensations fixed before that time by the fiscal body of the county or municipality, as the case may be. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by law.

(b) **AREA.** Each area plan commission shall prescribe the qualifications of, and with the consent of the executive director, fix the compensation of the employees of the planning department, which compensation must conform to salaries and compensations fixed before that time by the county fiscal body. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by law.

(c) **METRO.** The metropolitan development commission shall delegate authority to employees of the department of metropolitan development to perform ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by law.

(d) The plan commission may delegate to a hearing examiner or a committee of the commission the authority to conduct any public hearing required to be held by the commission or make any decision required to be made by the commission, or both. However, only a plat committee appointed under section 701(e) of this chapter may be delegated the authority to make decisions under the 700 series of this chapter. Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire commission, and the examiner or committee shall report findings of fact and recommendations for decision to the commission or make the decision on behalf of the commission. A decision made under the authority of this subsection may not be a basis for judicial review, but it may be appealed to the plan commission. An interested person who wishes to appeal a decision made under the authority of this subsection must file the appeal not later than five (5) days after the date the decision is made, and the plan commission shall then hold the prescribed hearing and render its decision.

(e) **METRO.** The metropolitan development commission may designate a historic preservation commission created under IC 36-7-11.1-3 to conduct the public hearing required to be held by

the metropolitan development commission under the 600 series of this chapter relative to the territory included in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing must be held upon the same notice and under the same rules as a hearing before the metropolitan development commission. The historic preservation commission shall report to the metropolitan development commission the historic preservation commission's findings of fact and recommendations for decision. The metropolitan development commission shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations. If an exception is filed in accordance with the rules, the metropolitan development commission shall hold the prescribed hearing. If an exception is not filed, the metropolitan development commission shall render a decision without further hearing. However, this subsection does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a rezoning by the metropolitan development commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.19; P.L.321-1995, SEC.1; P.L.126-2011, SEC.13.*

#### **IC 36-7-4-403**

##### **Repealed**

*(Repealed by P.L.12-1983, SEC.24.)*

#### **IC 36-7-4-403.5**

##### **Duties; powers; combined hearing procedure**

Sec. 403.5. (a) If authorized by a zoning ordinance, the plan commission may designate a hearing examiner or committee of the commission to conduct a combined hearing procedure relative to developments that require more than one (1) hearing under this chapter. In conducting the combined hearing procedure under this section, the hearing examiner or committee of the commission may exercise the following:

- (1) Powers of the hearing examiner or committee under section 402(d) of this chapter in relation to the 600 series of this chapter.
- (2) Powers of the plat committee under the 700 series of this chapter.
- (3) Powers of a board of zoning appeals under the 900 series of this chapter.
- (4) Powers of the plan commission staff or a hearing examiner or committee of the plan commission under the 1400 series of this chapter.

(b) Decisions of the hearing examiner or committee of the plan commission under the combined hearing procedure may be excepted to or appealed as follows:

- (1) Decisions under the authority of section 402(d) of this

chapter in relation to powers granted under the 600 series of this chapter shall be appealed to the plan commission in the same manner as decisions of the hearing examiner or committee under section 402(d) of this chapter may be appealed.

(2) Decisions under the authority of the 700 series of this chapter shall be appealed to the plan commission in the same manner as decisions of the plat committee may be appealed.

(3) Decisions under the authority of the 900 series of this chapter shall be appealed to the plan commission, within five (5) days after the decision is rendered, and the plan commission shall consider the petition in the same manner as the petition would be considered by a board of zoning appeals.

(c) The plan commission shall make rules governing the hearing of cases under the combined hearing procedure. The rules may not require a petitioner or an applicant to use the combined hearing procedure authorized under this section.

(d) The plan commission may adopt rules setting specific procedures to facilitate informal settlement of matters. The rules may grant procedural rights to persons in addition to those conferred by this chapter, so long as the rights conferred upon other persons are not substantially prejudiced. This subsection does not require any person to settle a matter under the plan commission's informal procedures.

*As added by P.L.321-1995, SEC.2. Amended by P.L.126-2011, SEC.14.*

#### **IC 36-7-4-404**

##### **Power to sue and be sued; costs**

Sec. 404. (a) ADVISORY. Each advisory plan commission shall sue and be sued collectively by its legal name, styled according to the municipality or county, "\_\_\_\_\_ Plan Commission", with service of process on the executive director or the president of the commission. No costs may be taxed against the commission or any of its members in any action.

(b) AREA. Each area plan commission shall sue and be sued collectively by its legal name, styled "The Area Plan Commission of \_\_\_\_\_ County" or a similar title adopted by official resolution of the commission, with service of process on the executive director or by leaving a copy at the office of the commission. No costs may be taxed against the commission or any of its members in any action.

(c) METRO. The metropolitan development commission shall sue and be sued collectively by its legal name, styled "The Metropolitan Development Commission of \_\_\_\_\_ County", with service of process on the director of the department of metropolitan development or by leaving a copy at the office of the department. No costs may be taxed against the commission or any of its members in any action.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.192-1984,*

*SEC. 9.*

**IC 36-7-4-405**

**Duties of plan commission; street names and numbers; areas not subject to plan commission; notice; development plans**

Sec. 405. (a) **ADVISORY – AREA.** Each plan commission shall:

(1) make recommendations to the legislative body or bodies concerning:

(A) the adoption of the comprehensive plan and amendments to the comprehensive plan;

(B) the adoption or text amendment of:

(i) an initial zoning ordinance;

(ii) a replacement zoning ordinance; and

(iii) a subdivision control ordinance;

(C) the adoption or amendment of a PUD district ordinance (as defined in section 1503 of this chapter); and

(D) zone map changes; and

(2) render decisions concerning and approve plats, replats, and amendments to plats of subdivisions under the 700 series of this chapter.

(b) Each plan commission:

(1) shall assign street numbers to lots and structures;

(2) shall renumber lots and structures; and

(3) if the plan commission does not have the power under an ordinance adopted under subsection (c) to name or rename streets, may recommend the naming and renaming of streets to the executive.

(c) The executive shall name or rename streets. However, a unit may provide by ordinance that the plan commission rather than the executive shall name or rename streets. Streets shall be named or renamed so that their names are easy to understand and to avoid duplication or conflict with other names. The plan commission may, by rule, prescribe a numbering system for lots and structures.

(d) This subsection applies to a plan commission having jurisdiction in a county with a population of at least four hundred thousand (400,000). The plan commission shall number structures on highways within the plan commission's jurisdiction to conform with the numbers of structures on streets within cities in the county.

(e) This subsection applies to unincorporated areas subject to the jurisdiction of no plan commission under this article. The county executive:

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(f) This subsection applies to areas located within a municipality that are subject to the jurisdiction of no plan commission under this article. The executive of the municipality:

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(g) An executive acting under subsection (e) or (f) shall name or rename streets:

(1) so that their names are easy to understand; and

(2) to avoid duplication or conflict with other names.

(h) If streets are named or renamed or lots and structures are numbered or renumbered under this section, the commission or executive that makes the naming or numbering decision shall notify:

(1) the circuit court clerk or board of registration;

(2) the statewide 911 board established by IC 36-8-16.7-24 and the administrator of an enhanced emergency telephone system established under IC 36-8-16 (before its repeal on July 1, 2012), if any;

(3) the United States Postal Service; and

(4) any person or body that the commission or executive considers appropriate to receive notice;

of its action no later than the last day of the month following the month in which the action is taken.

(i) Each plan commission shall make decisions concerning development plans and amendments to development plans under the 1400 series of this chapter, unless the responsibility to render decisions concerning development plans has been delegated under section 1402(c) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.21; P.L.13-1988, SEC.21; P.L.119-1989, SEC.2; P.L.260-1993, SEC.2; P.L.320-1995, SEC.4; P.L.132-2012, SEC.10.*

#### **IC 36-7-4-405.5**

##### **Conversion of rural route addresses**

Sec. 405.5. (a) This section applies to a county where any territory contains rural route addresses.

(b) Each plan commission shall develop a plan for converting rural route addresses within the county to numbered addresses under section 405 of this chapter.

(c) This subsection applies to a county or part of a county that is not under the jurisdiction of a plan commission. The county executive shall develop a plan for converting rural route addresses within the county (or part of a county) to numbered addresses under section 405 of this chapter.

(d) A plan adopted under this section must specify a date by which the plan commission or county executive intends to complete the conversion of rural route addresses to numbered addresses.

*As added by P.L.3-1995, SEC.153.*

#### **IC 36-7-4-406**

## **Repealed**

*(Repealed by P.L.220-1986, SEC.32.)*

### **IC 36-7-4-407**

#### **Duties; powers; advisory citizens' committees**

Sec. 407. Each plan commission may establish advisory committees of citizens interested in problems of planning and zoning. In its resolution establishing such a committee, the commission shall specify the terms of its members and its purposes. Each advisory committee shall:

- (1) study the subject and problems specified by the commission and recommend to the commission additional problems in need of study;
- (2) advise the commission concerning how the subject and problems relate particularly to different areas and groups in the community; and
- (3) if invited by the commission to do so, sit with and participate, without the right to vote, in the deliberations of the commission, when subjects of mutual concern are discussed.

A committee shall report only to the commission and shall make inquiries and reports only on the subject and problems specified by the commission's resolution establishing the committee.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.22.*

### **IC 36-7-4-408**

#### **Powers; executive committee**

Sec. 408. (a) Each plan commission may establish an executive committee of not less than three (3) nor more than nine (9) persons appointed by the commission from its membership. The establishment of the executive committee, the naming of its individual members, and the adoption of rules governing its operation requires a two-thirds (2/3) majority vote of the entire membership of the commission.

(b) A majority of the executive committee may act in the name of the commission; but if there are any dissenting votes, a person voting in the minority may appeal the decision of the executive committee to the commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.23.*

### **IC 36-7-4-409**

#### **Powers; grants-in-aid**

Sec. 409. Each plan commission may, within its approved budget, negotiate for grants-in-aid and agree to terms and conditions attached to them. This section is specific authority to enter into grants-in-aid agreements under 40 U.S.C. section 461. Under the same limitations, the commission may enter into grants-in-aid agreements under that



act as amended and any other act relating to planning and zoning.  
*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.24.*

#### **IC 36-7-4-410**

##### **Powers; county-municipal plan commission**

Sec. 410. (a) **ADVISORY.** The legislative body of any municipality located in a county having an advisory plan commission may, by ordinance, designate that county plan commission as the municipal plan commission. Such an ordinance may also provide that the county board of zoning appeals has jurisdiction within the corporate boundaries of the municipality. A county plan commission so designated has for that municipality all the powers and duties granted, under the advisory planning law, to a municipal plan commission. Any municipality designating a county plan commission as its municipal plan commission may contract annually to pay the county a proportionate part of the expenses that is properly chargeable to the planning service rendered that municipality. The county shall appropriate these payments to the county plan commission in addition to any sums budgeted for planning purposes.

(b) **ADVISORY.** Whenever a municipality designates a county plan commission as its municipal plan commission under subsection (a), residents of that municipality are eligible to be appointed citizen members of the commission under section 208(a)(5) of this chapter. Whenever a county board of zoning appeals has jurisdiction within the corporate boundaries of a municipality, residents of that municipality are eligible to be appointed citizen members of the board of zoning appeals under section 902 of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.192-1984, SEC.10; P.L.126-2011, SEC.15.*

#### **IC 36-7-4-411**

##### **Powers; fees**

Sec. 411. The plan commission may establish a schedule of reasonable fees to defray the administrative costs connected with:

- (1) processing and hearing administrative appeals and petitions for rezoning, special exceptions, special uses, contingent uses, and variances;
- (2) issuing permits; and
- (3) other official actions taken under this chapter.

*As added by Acts 1981, P.L.310, SEC.25. Amended by P.L.192-1984, SEC.11.*

#### **IC 36-7-4-500**

##### **500 Series—Comprehensive plan**

Sec. 500. This series (sections 500 through 599 of this chapter) may be cited as follows: 500 SERIES—COMPREHENSIVE PLAN.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-501****Comprehensive plan; requirement; approval; purpose**

Sec. 501. A comprehensive plan shall be approved by resolution in accordance with the 500 series for the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development. The plan commission shall prepare the comprehensive plan.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.26; P.L.335-1985, SEC.3.*

**IC 36-7-4-502****Comprehensive plan; contents**

Sec. 502. A comprehensive plan must contain at least the following elements:

- (1) A statement of objectives for the future development of the jurisdiction.
- (2) A statement of policy for the land use development of the jurisdiction.
- (3) A statement of policy for the development of public ways, public places, public lands, public structures, and public utilities.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.27; P.L.335-1985, SEC.4.*

**IC 36-7-4-503****Comprehensive plan; additional contents**

Sec. 503. A comprehensive plan may, in addition to the elements required by section 502 of this chapter, include the following:

- (1) Surveys and studies of current conditions and probable future growth within the jurisdiction and adjoining jurisdictions.
- (2) Maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:
  - (A) History, population, and physical site conditions.
  - (B) Land use, including the height, area, bulk, location, and use of private and public structures and premises.
  - (C) Population densities.
  - (D) Community centers and neighborhood units.
  - (E) Areas needing redevelopment and conservation.
  - (F) Public ways, including bridges, viaducts, subways, parkways, and other public places.
  - (G) Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes.
  - (H) Air, land, and water pollution.
  - (I) Flood control and irrigation.
  - (J) Public and private utilities, such as water, light, heat,

communication, and other services.

(K) Transportation, including rail, bus, truck, air and water transport, and their terminal facilities.

(L) Local mass transit, including taxicabs, buses, and street, elevated, or underground railways.

(M) Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public places of a recreational nature.

(N) Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings.

(O) Education, including location and extent of schools and postsecondary educational institutions.

(P) Land utilization, including agriculture, forests, and other uses.

(Q) Conservation of energy, water, soil, and agricultural and mineral resources.

(R) Any other factors that are a part of the physical, economic, or social situation within the jurisdiction.

(3) Reports, maps, charts, and recommendations setting forth plans and policies for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations (set out in subdivision (2) of this section) of the jurisdiction so as to substantially accomplish the purposes of this chapter.

(4) A short and long range development program of public works projects for the purpose of stabilizing industry and employment and for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects.

(5) A short and long range capital improvements program of governmental expenditures so that the development policies established in the comprehensive plan can be carried out and kept up-to-date for all separate taxing districts within the jurisdiction to assure efficient and economic use of public funds.

(6) A short and long range plan for the location, general design, and assignment of priority for construction of thoroughfares in the jurisdiction for the purpose of providing a system of major public ways that allows effective vehicular movement, encourages effective use of land, and makes economic use of public funds.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.28; P.L.335-1985, SEC.5; P.L.220-1986, SEC.9; P.L.185-2005, SEC.6; P.L.2-2007, SEC.386.*

#### **IC 36-7-4-504**

**Comprehensive plan; consideration of policy and pattern;**

**validation, continuance, and consolidation of preexisting plans**

Sec. 504. (a) After the comprehensive plan is approved for a jurisdiction, each governmental entity within the territorial jurisdiction where the plan is in effect shall give consideration to the general policy and pattern of development set out in the comprehensive plan in the:

- (1) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
- (2) authorization, construction, alteration, or abandonment of public ways, public places, public lands, public structures, or public utilities; and
- (3) adoption, amendment, or repeal of zoning ordinances, including zone maps and PUD district ordinances (as defined in section 1503 of this chapter), subdivision control ordinances, historic preservation ordinances, and other land use ordinances.

(b) A comprehensive plan or master plan adopted or approved under any prior law is validated and continues in effect as the comprehensive plan for the plan commission in existence on September 1, 1986, or any successor plan commission until the plan becomes a part of or is amended or superseded by the comprehensive plan of the latter plan commission. In addition, a thoroughfare plan adopted or approved under any prior law is validated and continues in effect as a part of the comprehensive plan on and after September 1, 1986, until the thoroughfare plan is amended or superseded by changes in the comprehensive plan approved under this chapter.

(c) AREA. To effect the consolidation of the various plans and ordinances in force in the county and in the participating municipality into one (1) comprehensive plan, the area plan commission shall approve the comprehensive plans of the participating municipalities as its first comprehensive plan. The commission shall also recommend under applicable law to the participating legislative bodies, without amendment, the adoption of the zoning, subdivision control, thoroughfare, and other ordinances relating to the jurisdiction of the participating legislative body. If lands within the jurisdiction of the commission are not regulated by zoning ordinances, the commission shall classify those lands as residential or agricultural, until they can conduct such land use studies as are necessary for reclassification and zoning. Because the unification of the planning and zoning function is of an emergency character, the commission and the participating legislative bodies shall initially adopt these preliminary plans and ordinances by simple resolution, to continue in effect until finally adopted in conformity with the area planning law.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.6; P.L.220-1986, SEC.10; P.L.320-1995, SEC.5.*

**IC 36-7-4-504.5****Comprehensive plan; township advisory committee**

Sec. 504.5. (a) In preparing or revising a comprehensive plan for a township, the legislative body of the consolidated city shall adopt an ordinance requiring the plan commission to establish an advisory committee of citizens interested in problems of planning and zoning for that township, a majority of whom shall be nominated by the township legislative body.

(b) An advisory committee created under subsection (a) must include a representative of the affected township legislative body as determined by procedures established in an ordinance adopted by the legislative body of the consolidated city.

*As added by P.L.164-1995, SEC.18.*

#### **IC 36-7-4-505**

##### **Comprehensive plan; requests for related information**

Sec. 505. (a) When the plan commission undertakes the preparation of a comprehensive plan, the commission may request any public or private officials to make available any information, documents, and plans that have been prepared and that provide any information that relates to the comprehensive plan.

(b) All officials and departments of state government and of the political subdivisions operating within lands under the jurisdiction of the plan commission shall comply with requests under subsection (a).

(c) All officials of public and private utilities operating within lands under the jurisdiction of the plan commission shall comply with requests under subsection (a) to furnish public information.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.29; P.L.335-1985, SEC.7.*

#### **IC 36-7-4-506**

##### **Thoroughfare plans included in comprehensive plans; location, change, vacation, or improvement of thoroughfares**

Sec. 506. (a) A thoroughfare plan that is included in the comprehensive plan may determine lines for new, extended, widened, or narrowed public ways in any part of the territory in the jurisdiction.

(b) The determination of lines for public ways, as provided in subsection (a), does not constitute the opening, establishment, or acceptance of land for public way purposes.

(c) After a thoroughfare plan has been included in the comprehensive plan, thoroughfares may be located, changed, widened, straightened, or vacated only in the manner indicated by the comprehensive plan.

(d) After a thoroughfare plan has been included in the comprehensive plan, the plan commission may recommend to the agency responsible for constructing thoroughfares in the jurisdiction the order in which thoroughfare improvements should be made.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981,*

*P.L.310, SEC.30; P.L.335-1985, SEC.8; P.L.220-1986, SEC.11.*

#### **IC 36-7-4-507**

##### **Comprehensive plan; notice and hearings before adoption**

Sec. 507. Before the approval of a comprehensive plan, the plan commission must:

- (1) give notice and hold one (1) or more public hearings on the plan;
- (2) publish, in accordance with IC 5-3-1, a schedule stating the times and places of the hearing or hearings. The schedule must state the time and place of each hearing, and state where the entire plan is on file and may be examined in its entirety for at least ten (10) days before the hearing.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.18; P.L.335-1985, SEC.9.*

#### **IC 36-7-4-508**

##### **Comprehensive plan; adoption; certification; plan and summary availability for inspection; legalization of certain comprehensive plans**

Sec. 508. (a) After a public hearing or hearings have been held, the plan commission may approve the comprehensive plan.

(b) ADVISORY—AREA. Upon approval, the plan commission shall certify the comprehensive plan to each participating legislative body.

(c) The plan commission may approve each segment of the comprehensive plan as it is completed. However, that approval does not preclude future examination and amendment of the comprehensive plan under the 500 series. A comprehensive plan that:

- (1) was approved before March 14, 1994, under this subsection as in effect before March 14, 1994; and
- (2) was not filed in the county recorder's office as required by this subsection as in effect before March 14, 1994;

is legalized.

(d) METRO. As used in this subsection, "comprehensive plan" or "plan" includes any segment of a comprehensive plan. Approval of the comprehensive plan by the metropolitan development commission is final. However, the commission may certify the comprehensive plan to the legislative body of each municipality in the county, to the executive of the consolidated city, and to any other governmental entity that the commission wishes. The commission shall make a complete copy of the plan available for inspection in the office of the plan commission. One (1) summary of the plan shall be recorded in the county recorder's office. The summary of the plan must identify the following:

- (1) The major components of the plan.
- (2) The geographic area subject to the plan, including the townships or parts of townships that are subject to the plan.

(3) The date the commission adopted the plan.  
*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.10; P.L.31-1994, SEC.11; P.L.220-2011, SEC.661.*

#### **IC 36-7-4-509**

##### **Comprehensive plan; legislative approval, rejection, or amendment**

Sec. 509. (a) ADVISORY—AREA. After certification of the comprehensive plan, the legislative body may adopt a resolution approving, rejecting, or amending the plan. Such a resolution requires only a majority vote of the legislative body, and is not subject to approval or veto by the executive of the adopting unit, and the executive is not required to sign it.

(b) ADVISORY—AREA. The comprehensive plan is not effective for a jurisdiction until it has been approved by a resolution of its legislative body. After approval by resolution of the legislative body of the unit, it is official for each unit that approves it. Upon approval of the comprehensive plan by the legislative body, the clerk of the legislative body shall place one (1) copy of the comprehensive plan on file in the office of the county recorder.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.11; P.L.220-1986, SEC.12.*

#### **IC 36-7-4-510**

##### **Comprehensive plan; procedure following legislative rejection or amendment**

Sec. 510. (a) ADVISORY—AREA. If the legislative body, by resolution, rejects or amends the comprehensive plan, then it shall return the comprehensive plan to the plan commission for its consideration, with a written statement of the reasons for its rejection or amendment.

(b) ADVISORY—AREA. The commission has sixty (60) days in which to consider the rejection or amendment and to file its report with the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to file its report. If the commission approves the amendment, the comprehensive plan stands, as amended by the legislative body, as of the date of the filing of the commission's report with the legislative body. If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another resolution of the legislative body.

(c) ADVISORY—AREA. If the commission does not file a report with the legislative body within the time allotted under subsection (b), the action of the legislative body in rejecting or amending the comprehensive plan becomes final.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.31; P.L.335-1985, SEC.12; P.L.220-1986, SEC.13.*

**IC 36-7-4-511****Comprehensive plan; amendment approval; preparation and submission of amendments**

Sec. 511. (a) Each amendment to the comprehensive plan must be approved according to the procedure set forth in the 500 series.

(b) **ADVISORY—AREA.** If the legislative body wants an amendment, it may direct the plan commission to prepare the amendment and submit it in the same manner as any other amendment to the comprehensive plan. The commission shall prepare and submit the amendment within sixty (60) days after the formal written request by the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to prepare and submit the amendment. *As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.13; P.L.220-1986, SEC.14.*

**IC 36-7-4-512****Comprehensive plan; capital improvement projects**

Sec. 512. **METRO.** This section applies only to capital improvement projects consisting of real or personal property (or improvements) that have a useful life of more than one (1) year and a value of more than one hundred thousand dollars (\$100,000). At least thirty (30) days before a governmental entity within the county:

- (1) undertakes or acquires any such capital improvement project;
- (2) starts the required proceedings to spend money or let contracts for such a project; or
- (3) authorizes the issuance of bonds for the purpose of financing such a project;

the governmental entity must notify the metropolitan development commission in writing of the location, cost, and nature of the project. The commission may by rule limit the kinds of capital improvement projects that are subject to the notification requirement of this section. The commission may designate an agency responsible for fiscal analyses or control to receive notifications required by this section.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.32; P.L.335-1985, SEC.14.*

**IC 36-7-4-600****600 Series—Zoning ordinance**

Sec. 600. This series (sections 600 through 699 of this chapter) may be cited as follows: 600 SERIES—ZONING ORDINANCE.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-601****Zoning ordinance; powers and duties of legislative body**

Sec. 601. (a) The legislative body having jurisdiction over the



geographic area described in the zoning ordinance has exclusive authority to adopt a zoning ordinance under the 600 series. However, no zoning ordinance may be adopted until a comprehensive plan has been approved for the jurisdiction under the 500 series of this chapter.

(b) When it adopts a zoning ordinance, the legislative body shall:

- (1) designate the geographic area over which the plan commission shall exercise jurisdiction; and
- (2) incorporate by reference into the ordinance zone maps, as prepared by the plan commission under subsection (e).

(c) When it adopts a zoning ordinance, the legislative body shall act for the purposes of:

- (1) securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;
- (2) lessening or avoiding congestion in public ways;
- (3) promoting the public health, safety, comfort, morals, convenience, and general welfare; and
- (4) otherwise accomplishing the purposes of this chapter.

(d) For the purposes described in subsection (c), the legislative body may do the following in the zoning ordinance:

- (1) Establish one (1) or more districts, which may be for agricultural, commercial, industrial, residential, special, or unrestricted uses and any subdivision or combination of these uses. A district may include geographic areas that are not contiguous. A geographic area may be subject to more than one (1) district.

(2) In each district, regulate how real property is developed, maintained, and used. This regulation may include:

- (A) requirements for the area of front, rear, and side yards, courts, other open spaces, and total lot area;
- (B) requirements for site conditions, signs, and nonstructural improvements, such as parking lots, ponds, fills, landscaping, and utilities;
- (C) provisions for the treatment of uses, structures, or conditions that are in existence when the zoning ordinance takes effect;
- (D) restrictions on development in areas prone to flooding;
- (E) requirements to protect the historic and architectural heritage of the community;
- (F) requirements for structures, such as location, height, area, bulk, and floor space;
- (G) restrictions on the kind and intensity of uses;
- (H) performance standards for the emission of noises, gases, heat, vibration, or particulate matter into the air or ground or across lot lines;
- (I) standards for population density and traffic circulation; and
- (J) any other provisions that are necessary to implement the

purposes of the zoning ordinance.

(3) Designate zoning districts in areas having special development problems or needs for compatibility in which a plan commission shall:

(A) approve or disapprove development plans under the 1400 series of this chapter; and

(B) ensure that a development plan approved under this subdivision is consistent with the comprehensive plan and the development requirements specified in the zoning ordinance.

(4) Provide for planned unit development through adoption and amendment of zoning ordinances, including PUD district ordinances (as defined in section 1503 of this chapter).

(5) Establish in which districts the subdivision of land may occur.

(e) When it prepares a proposal to initially adopt a zoning ordinance for a jurisdiction, the plan commission shall also prepare zone maps. The purpose of the zone maps is to indicate the districts into which the incorporated areas and unincorporated areas, if any, are divided.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.212, SEC.2; P.L.355-1983, SEC.1; P.L.335-1985, SEC.15; P.L.220-1986, SEC.15; P.L.320-1995, SEC.6.*

#### **IC 36-7-4-602**

##### **Zoning ordinance; procedures for adoption of ordinances, amendments, and map changes**

Sec. 602. (a) The following procedure applies to a proposal to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) for a jurisdiction:

(1) The plan commission must initiate the proposal.

(2) The plan commission must prepare the proposal so that it is consistent with section 601 of this chapter.

(3) The plan commission and the legislative body both must comply with section 603 of this chapter.

(4) The plan commission must give notice and hold a public hearing under section 604 of this chapter.

(5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.

(6) The legislative body must consider the proposal under section 606 of this chapter, and section 606 of this chapter governs whether the proposal is adopted or defeated.

(7) If the proposal is adopted under section 606 of this chapter, the plan commission must print (and publish, if required) the ordinance under section 610 of this chapter.

(8) The ordinance takes effect as described in section 610 of this chapter.

(b) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to amend or partially repeal the text (not zone maps) of the ordinance:

- (1) The plan commission may initiate the proposal. (Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)
- (2) The plan commission must prepare the proposal so that it is consistent with section 601 of this chapter.
- (3) The plan commission and the legislative body both must comply with section 603 of this chapter.
- (4) The plan commission must give notice and hold a public hearing under section 604 of this chapter.
- (5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.
- (6) The legislative body must consider the proposal under section 607 of this chapter, and section 607 of this chapter governs whether the proposal is adopted or defeated.
- (7) If the proposal is adopted under section 607 of this chapter, the plan commission must print the amendments to the zoning ordinance under section 610 of this chapter.
- (8) The amendments take effect as described in section 610 of this chapter.

(c) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to change the zone maps (whether by incorporating an additional map or by amending or deleting a map) incorporated by reference into the ordinance:

- (1) The proposal may be initiated either:
  - (A) by the plan commission; or
  - (B) by a petition signed by property owners who own at least fifty percent (50%) of the land involved.
- (Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)
- (2) The plan commission or petitioners must prepare the proposal so that it is consistent with section 601 of this chapter.
- (3) The plan commission and the legislative body both must comply with section 603 of this chapter.
- (4) The plan commission must give notice and hold a public hearing under section 604 of this chapter.
- (5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.
- (6) Except as provided in subdivision (7), the legislative body must consider the proposal under section 608 of this chapter, and section 608 of this chapter governs whether the proposal is adopted or defeated.

(7) If the alternate procedure in section 608.7 of this chapter is adopted, that section governs whether the proposal is adopted or defeated after consideration by:

(A) the plan commission under section 608.7 of this chapter;  
or

(B) the legislative body under section 608 of this chapter.

(8) If the proposal is adopted under section 608 or 608.7 of this chapter, the plan commission must update the zone maps that it keeps available under section 610 of this chapter.

(9) The zone map changes take effect as described in section 610 of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.19; P.L.335-1985, SEC.16; P.L.220-1986, SEC.16; P.L.192-2016, SEC.1.*

#### **IC 36-7-4-603**

##### **Zoning ordinance; preparation and consideration of proposals**

Sec. 603. In preparing and considering proposals under the 600 series, the plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.17; P.L.220-1986, SEC.17.*

#### **IC 36-7-4-604**

##### **Zoning ordinance; notice and hearing before certification of proposed ordinance; prohibited communications**

Sec. 604. (a) Before the plan commission certifies a proposal to the legislative body under section 605 of this chapter, the plan commission must hold a public hearing under this section.

(b) The plan commission shall give notice of the hearing by publication under IC 5-3-1. The notice must state:

- (1) the time and place of the hearing;
- (2) either:
  - (A) in the case of a proposal under section 606 or 607 of this chapter, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies; or
  - (B) in the case of a proposal under section 608 of this chapter, the geographic area that is the subject of the zone map change;

(This subdivision does not require the identification of any real

property by metes and bounds.)

(3) either:

(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text of the ordinance);

(B) in the case of a proposal under section 607 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text) that describes any new or changed provisions; or

(C) in the case of a proposal under section 608 of this chapter, a description of the proposed change in the zone maps;

(4) if the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;

(5) the place where a copy of the proposal is on file for examination before the hearing;

(6) that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered;

(7) that oral comments concerning the proposal will be heard; and

(8) that the hearing may be continued from time to time as may be found necessary.

(c) The plan commission shall also provide for due notice to interested parties at least ten (10) days before the date set for the hearing. The commission shall by rule determine who are interested parties, how notice is to be given to interested parties, and who is required to give that notice. However, if the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under this subsection.

(d) The hearing must be held by the plan commission at the place stated in the notice. The commission may also give notice and hold hearings at other places within the county where the distribution of population or diversity of interests of the people indicate that the hearings would be desirable. The commission shall adopt rules governing the conduct of hearings under this section.

(e) A zoning ordinance may not be held invalid on the ground that the plan commission failed to comply with the requirements of this section, if the notice and hearing substantially complied with this section.

(f) The files of the plan commission concerning proposals are public records and shall be kept available at the commission's office

for inspection by any interested person.

(g) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter or in the case of a proposed approval of a development plan required by a zoning ordinance as a condition of development, a person may not communicate before the hearing with any hearing officer, member of the historic preservation commission, or member of the plan commission with intent to influence the officer's or member's action on the proposal. Before the hearing, the staff may submit a statement of fact concerning the physical characteristics of the area involved in the proposal, along with a recital of surrounding land use and public facilities available to serve the area. The staff may include with the statement an opinion of the proposal. The statement must be made a part of the file concerning the proposal not less than six (6) days before the proposal is scheduled to be heard. The staff shall furnish copies of the statement to persons in accordance with rules adopted by the commission.

(h) METRO. In the case of a proposal to amend a zoning map under section 608 or 608.7 of this chapter, this subsection applies if the proposal affects only real property within the corporate boundaries of an excluded city. Notwithstanding the other provisions of this section, the legislative body of the excluded city may decide that the legislative body rather than the plan commission should hold the public hearing prescribed by this section. Whenever the plan commission receives a proposal subject to this section, the plan commission shall refer the proposal to the legislative body of the excluded city. At the legislative body's first regular meeting after receiving a referred proposal, the legislative body shall decide whether the legislative body will hold the public hearing. Within thirty (30) days after making the decision to hold the hearing, the legislative body shall hold the hearing, acting for purposes of this section as if the legislative body is the plan commission. The legislative body shall then make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for the public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. The favorable recommendation, the unfavorable recommendation, or no recommendation of the plan commission on the proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

(i) Before a proposal involving a structure regulated under IC 8-21-10 may become effective, the plan commission must have received:

(1) a copy of:

(A) the permit for the structure issued by the Indiana department of transportation; or

(B) the Determination of No Hazard to Air Navigation

issued by the Federal Aviation Administration; and  
(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.18; P.L.220-1986, SEC.18; P.L.344-1987, SEC.1; P.L.190-1988, SEC.1; P.L.321-1995, SEC.3; P.L.54-2002, SEC.5; P.L.192-2016, SEC.2.*

#### **IC 36-7-4-605**

##### **Certification of proposed ordinance**

Sec. 605. (a) ADVISORY—AREA. A proposed zoning ordinance shall be certified to each participating legislative body by the plan commission as follows:

(1) If the proposal is to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) under section 606 of this chapter, it may be certified only if it receives a favorable recommendation from the commission.

(2) If the proposal is to amend or partially repeal the text (not zone maps) of the ordinance under section 607 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(3) If the proposal is to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(b) METRO. Except as provided in subsection (c), a proposal shall be certified to the legislative body by the metropolitan development commission only if it receives a favorable recommendation from the commission.

(c) METRO. A proposal to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter shall be certified to the legislative body by the metropolitan development commission regardless of whether the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(d) The legislative body shall consider the recommendation (if any) of the commission before acting on the proposal under section 606, 607, or 608 of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.20; P.L.335-1985, SEC.19; P.L.220-1986, SEC.19; P.L.88-2014, SEC.1.*

#### **IC 36-7-4-606**

##### **Zoning ordinance; procedure on proposal to adopt initial or**

**replacement ordinance for a jurisdiction**

Sec. 606. (a) This section applies to a proposal, as described in section 602(a) of this chapter, to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) for a jurisdiction.

(b) At the first regular meeting of the legislative body after the plan commission certifies the proposal under section 605 of this chapter, the legislative body shall either:

- (1) adopt, reject, or amend the proposal; or
- (2) decide to further consider the proposal, in which case the proposal may be scheduled for a further hearing at any regular or special meeting of the legislative body within ninety (90) days after certification. In any event, the legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

(c) If the legislative body proceeds under subsection (b)(1), it shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting. If the legislative body proceeds under subsection (b)(2) to schedule a further hearing, it shall publish a notice of the hearing in accordance with IC 5-3-1, announce the hearing during a meeting, and enter the announcement in its memoranda and minutes. The notice and announcement must state:

- (1) the date, time, and place of the hearing;
- (2) that it pertains to an original zoning ordinance;
- (3) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor at or before the hearing will be heard; and
- (4) that the hearing may be continued from time to time as may be found necessary.

(d) The recommendation of the plan commission concerning the proposal must be on file in the commission's office for public examination for at least ten (10) days before any hearing scheduled under subsection (b)(2). On completion of the hearing, the legislative body shall consider the proposal.

(e) If the legislative body adopts the proposal, the ordinance takes effect as other ordinances of the legislative body.

(f) If the legislative body fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(g) If the legislative body rejects or amends the proposal, it shall be returned to the plan commission for its consideration, with a written statement of the reasons for the rejection or amendment. The commission has forty-five (45) days in which to consider the rejection or amendment and report to the legislative body as follows:

- (1) If the commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as



passed by the legislative body as of the date of the filing of the commission's report of approval with the legislative body or the end of the forty-five (45) day period.

(2) If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another vote of the legislative body within forty-five (45) days after the commission certifies its disapproval. If the legislative body fails to confirm its action under this subdivision, then the ordinance takes effect in the manner provided in subsection (f).

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.21; P.L.356-1983, SEC.1; P.L.335-1985, SEC.20; P.L.220-1986, SEC.20.*

#### **IC 36-7-4-607**

##### **Zoning ordinance; procedure on proposal to amend or partially repeal ordinance**

Sec. 607. (a) This section applies to a proposal, as described in section 602(b) of this chapter, to amend or partially repeal the text (not zone maps) of the zoning ordinance.

(b) **ADVISORY—AREA.** If the proposal is initiated by a participating legislative body instead of the plan commission, the proposal must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body.

(c) On receiving or initiating the proposal, the commission shall, within sixty (60) days, hold a public hearing in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(d) The legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

(e) This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt, reject, or amend the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body fails to act on the proposal within ninety (90) days after certification, it takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(4) If the legislative body rejects or amends the proposal, it shall be returned to the plan commission for its consideration,

with a written statement of the reasons for the rejection or amendment. The commission has forty-five (45) days in which to consider the rejection or amendment and report to the legislative body as follows:

- (A) If the commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the legislative body as of the date of the filing of the commission's report of approval with the legislative body or the end of the forty-five (45) day period.
- (B) If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another vote of the legislative body within forty-five (45) days after the commission certifies its disapproval. If the legislative body fails to confirm its action under this clause, the ordinance takes effect in the manner provided in subdivision (3).

(f) **ADVISORY—AREA.** This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

- (1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt, reject, or amend the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.
- (2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.
- (3) If the legislative body rejects the proposal or fails to act on it within ninety (90) days after certification, it is defeated.
- (4) If the legislative body amends the proposal, it shall be returned to the plan commission for its consideration, with a written statement of the reasons for the amendment. The commission has forty-five (45) days in which to consider the amendment and report to the legislative body as follows:
  - (A) If the commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the legislative body as of the date of the filing of the commission's report of approval with the legislative body or the end of the forty-five (45) day period.
  - (B) If the commission disapproves the amendment, the action of the legislative body on the original amendment stands only if confirmed by another vote of the legislative body within forty-five (45) days after the commission certifies its disapproval. If the legislative body fails to confirm its action under this clause, the ordinance is defeated as provided in subdivision (3).

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981,*

*P.L.310, SEC.33; Acts 1982, P.L.212, SEC.3; P.L.355-1983, SEC.2; P.L.335-1985, SEC.21.*

#### **IC 36-7-4-608**

##### **Zoning ordinance; procedure for changing zoning maps**

Sec. 608. (a) This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) If the proposal is not initiated by the plan commission, it must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body. On receiving or initiating the proposal, the commission shall, within sixty (60) days, hold a public hearing in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(c) METRO. This subsection applies if the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the plan commission:

- (1) At the first regular meeting of the legislative body:
  - (A) after the proposal is certified under section 605 of this chapter; or
  - (B) after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:
    - (i) the alternate procedure in section 608.7 of this chapter is adopted; and
    - (ii) the legislative body makes the final determination on the proposal upon the request of an aggrieved person or the legislative body's own initiative under section 608.7(c) of this chapter;

the legislative body may, by a majority of those voting, schedule the proposal for a hearing on a date not later than its next regular meeting. The legislative body member in whose district the parcel of real property under consideration is located may submit a request to the president of the legislative body that the proposal be considered under this subsection.

(2) If the legislative body fails to schedule the proposal for a hearing under subdivision (1), the ordinance takes effect as if it had been adopted at the first regular meeting of the legislative body:

- (A) after the proposal is certified under section 605 of this chapter; or
- (B) after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:
  - (i) the alternate procedure in section 608.7 of this chapter is adopted; and
  - (ii) the legislative body makes the final determination on the proposal upon the request of an aggrieved person or

the legislative body's own initiative under section 608.7(c) of this chapter.

(3) For purposes of this subdivision, the final action date for a proposal is the date thirty (30) days after the date that the proposal is certified under section 605 of this chapter, or the date of the second regular meeting after the proposal is certified under section 605 of this chapter, whichever is later. However if:

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

(i) the request of an aggrieved person; or

(ii) the legislative body's own initiative;

under section 608.7(c) of this chapter;

the final action date for a proposal is the date of the second regular meeting after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter. If the legislative body schedules the proposal for a hearing under subdivision (1) but fails to act on it by the final action date, the ordinance takes effect as if it had been adopted (as certified) on the final action date. However, the period of time after certification under section 605 of this chapter, or after the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, to the final action date may be extended by the legislative body, with the consent of the initiating plan commission or the petitioning property owners. If the legislative body fails to act on the proposal by the final action date (as extended), the ordinance takes effect as if it had been adopted (as certified) on that extended final action date.

(4) If the legislative body schedules the proposal for a hearing under subdivision (1), it shall announce the hearing during a meeting and enter the announcement in its memoranda and minutes. The announcement must state:

(A) the date, time, and place of the hearing;

(B) a description of the proposed changes in the zone maps;

(C) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor will be heard; and

(D) that the hearing may be continued from time to time as may be found necessary.

(5) If the legislative body rejects the proposal at a hearing scheduled under subdivision (1), it is defeated.

(d) METRO. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (c)(5).

(e) ADVISORY–AREA. The legislative body shall vote on the proposal within ninety (90) days after:

(1) the plan commission certifies the proposal under section 605 of this chapter; or

(2) the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

(i) the request of an aggrieved person; or

(ii) the legislative body's own initiative;

under section 608.7(c) of this chapter.

(f) ADVISORY—AREA. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after:

(A) the proposal is certified under section 605 of this chapter; or

(B) the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:

(i) the alternate procedure in section 608.7 of this chapter is adopted; and

(ii) the legislative body makes the final determination on the proposal upon the request of an aggrieved person or the legislative body's own initiative under section 608.7(c) of this chapter;

(or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) Except as provided in subdivision (5), if the legislative body fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(5) This subdivision applies if:

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

(i) the request of an aggrieved person; or

(ii) the legislative body's own initiative;

under section 608.7(c) of this chapter.

If the legislative body fails to act on the proposal within ninety (90) days after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after the date of the notice.

(g) **ADVISORY—AREA.** This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, it is defeated.

(h) **ADVISORY—AREA.** The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.22; P.L.335-1985, SEC.22; P.L.345-1987, SEC.1; P.L.88-2014, SEC.2; P.L.192-2016, SEC.3.*

#### **IC 36-7-4-608.5**

##### **Repealed**

*(As added by P.L.164-1995, SEC.19. Repealed by P.L.32-2004, SEC.4.)*

#### **IC 36-7-4-608.7**

##### **Zoning ordinance; alternate procedure for changing zone maps**

Sec. 608.7. (a) A unit may adopt the alternate procedure set forth in this section to apply to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) The plan commission shall comply with section 608(b) of this chapter and certify a favorable recommendation, unfavorable recommendation, or no recommendation to the legislative body under section 605 of this chapter. Except as provided in subsection (c), if the plan commission makes:

(1) a favorable recommendation on the proposal, the proposal (as certified) takes effect as other ordinances:

(A) thirty (30) days after the date of the certification under section 605 of this chapter; or

(B) on a date less than thirty (30) days:

(i) after the date of the certification under section 605 of this chapter; and

(ii) that is specified in the ordinance adopting the alternate procedure; or

(2) an unfavorable recommendation or no recommendation on

the proposal, the proposal is defeated:

(A) thirty (30) days after the date of the certification under section 605 of this chapter; or

(B) on a date less than thirty (30) days:

(i) after the date of the certification under section 605 of this chapter; and

(ii) that is specified in the ordinance adopting the alternate procedure.

The plan commission shall notify the legislative body not later than the next business day after a proposal takes effect under subdivision (1) or is defeated under subdivision (2).

(c) If:

(1) any aggrieved person files with the plan commission a written request to have the final determination on the proposal made by the appropriate legislative body; or

(2) the legislative body files a notice with the plan commission that the legislative body shall make the final determination on the proposal;

the legislative body shall make the final determination on the proposal to change the zone map as set forth in section 608 of this chapter. The plan commission shall notify the legislative body in writing of a request under subdivision (1) not later than the next business day after receiving the request.

(d) A request or notice under subsection (c)(1) or (c)(2) must be filed not later than:

(1) twenty-nine (29) days after the date the favorable recommendation, the unfavorable recommendation, or no recommendation of the plan commission is certified under section 605 of this chapter; or

(2) on a date that is less than twenty-nine (29) days:

(A) after the date the favorable recommendation, the unfavorable recommendation, or no recommendation of the plan commission is certified under section 605 of this chapter; and

(B) that is specified in the ordinance adopting the alternate procedure.

*As added by P.L.192-2016, SEC.4.*

#### **IC 36-7-4-609**

#### **Zoning ordinances; vote required for action by legislative body; veto of city ordinances**

Sec. 609. (a) **ADVISORY.** A legislative body may take action under section 606, 607, or 608 of this chapter only by a vote of at least a majority of all the elected members of the body.

(b) **AREA.** A legislative body may take action under section 606, 607, or 608 of this chapter only by a vote of at least a majority of all the elected members of the body.

(c) **METRO.** The legislative body may take action under section

606, 607, or 608 of this chapter only by a vote of at least three-fifths (3/5) of all the elected members of the body.

(d) **ADVISORY—AREA.** Each city shall determine whether its zoning ordinances will be subject to veto by the executive of the city. If the city legislative body, by general ordinance, so provides, then each zoning ordinance adopted by that city under section 606, 607, or 608 of this chapter may be vetoed by the executive of the city. The executive must exercise the veto:

- (1) in a case in which the legislative body adopts (as certified) the proposal, within ten (10) days after the legislative body acts;
- (2) in a case in which the legislative body amends the proposal and the plan commission approves the amendment or fails to act, within fifty-five (55) days after the proposal is returned to the plan commission for its consideration;
- (3) in a case in which the legislative body amends the proposal and confirms its original amendment by another vote, within ten (10) days after the legislative body confirms its original amendment; or
- (4) in a case in which the proposal is to take effect because of the legislative body's failure to act within a period of days, within ten (10) days after the expiration of that period.

(e) If a city zoning ordinance is not vetoed under subsection (d), it takes effect without any action being taken by the executive of the city.

(f) **ADVISORY—AREA.** If a city zoning ordinance is vetoed under subsection (d), it is defeated unless the city legislative body, at its first regular or special meeting after receiving the veto message, passes the ordinance over the veto by a two-thirds (2/3) vote.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.34; P.L.335-1985, SEC.23.*

#### **IC 36-7-4-610**

##### **Zoning ordinance; notice of adoption; printing; presumption; effective date; copies**

Sec. 610. (a) After adoption of a zoning ordinance under section 606 of this chapter, the plan commission shall publish a notice of adoption in accordance with IC 5-3-1. The notice of adoption (which the plan commission shall have prepared) must:

- (1) summarize the subject matter of the ordinance;
- (2) give the date of adoption;
- (3) specify the places or areas that would be directly affected by the ordinance (this subdivision does not require the identification of any real property by metes and bounds);
- (4) specify the penalty or forfeiture prescribed for a violation of the ordinance; and
- (5) give two (2) locations open to the public where the entire text of the ordinance is available for inspection.

(b) After adoption of a zoning ordinance under section 606 or 607



of this chapter, the plan commission shall print the text of the ordinance in book or pamphlet form (or arrange for the inclusion of the zoning ordinance in the code of ordinances printed by the unit under IC 36-1-5), and no other printing or publication of any zoning ordinance is required. Printing of the text of a zoning ordinance in compliance with this subsection constitutes presumptive evidence:

- (1) of the text of the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any);
- (2) of the date of adoption of the ordinance, and of any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any); and
- (3) that the ordinance, along with any amendment to the ordinance that is contained in the code of ordinances, book, or pamphlet (and supplement, if any), has been properly signed, attested, and recorded.

(c) Zone maps incorporated by reference into the zoning ordinance are not required to be printed in the code of ordinances, book, or pamphlet printed under this section, but the plan commission shall keep them available at its office for public inspection.

(d) Unless a zoning ordinance provides for a later effective date, the ordinance takes effect when it is adopted under section 606, 607, or 608 of this chapter, subject to subsection (e).

(e) When a provision prescribing a penalty or forfeiture for a violation is printed under this section, it may not take effect until fourteen (14) days after the later of the following:

- (1) The final day on which notice of its adoption is published under subsection (a).
- (2) The day on which it is filed in the clerk's office under subsection (f).

(f) If the zoning ordinance is not included in the code of ordinances printed by a unit under IC 36-1-5:

- (1) the book or pamphlet (and supplement, if any) that comprises the zoning ordinance shall be incorporated by reference into the code of ordinances;
- (2) two (2) copies of the book or pamphlet (and supplement, if any) as printed under this section shall be filed in the office of the clerk of each participating legislative body, and these copies shall be kept on file in that office for public inspection as required by IC 36-1-5-4; and
- (3) the clerk shall keep additional copies of the book or pamphlet (and supplement, if any) in the clerk's office for the purpose of sale or distribution.

(g) If a unit includes the zoning ordinance in the unit's code of ordinances printed under IC 36-1-5, the plan commission shall also make copies of the zoning ordinance available to the public in accordance with IC 5-14-3.

(h) This chapter does not prohibit a unit from adopting:

- (1) a unified development ordinance that combines the unit's zoning and subdivision control ordinances into a single book, pamphlet, or code title, article, or chapter; or
- (2) form based codes or ordinances that employ combinations of maps, plats, charts, diagrams, tables, text, and images.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.24; P.L.220-1986, SEC.21; P.L.126-2011, SEC.16.*

#### **IC 36-7-4-610.5**

##### **Proposed changes in zone maps**

Sec. 610.5. This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance. If, not later than one hundred eighty (180) days after adoption of the proposal, the legislative body finds that the proposal was adopted as a result of a person's intentional misrepresentation or omission of material facts, the legislative body may, by a three-fourths (3/4) vote (as described in IC 36-1-8-14), adopt an ordinance to nullify any change in the zone maps that resulted from the misrepresentation or omission. Such an ordinance may be adopted by the legislative body without being referred to the plan commission for consideration and recommendation under sections 604, 605, and 608 of this chapter.

*As added by P.L.216-1999, SEC.3. Amended by P.L.125-2001, SEC.5.*

#### **IC 36-7-4-611**

##### **Zoning ordinance; due deliberation presumption; effectiveness within jurisdiction of adopting legislative body**

Sec. 611. (a) Any ordinance adopted under the 600 series is presumed to have been adopted after due deliberation in regard to the facts upon which the comprehensive plan was formulated.

(b) AREA. If a proposed zoning ordinance is adopted under section 606, 607, or 608 of this chapter by one (1) or more, but not all, of the participating legislative bodies, it has effect within the jurisdiction of each legislative body that adopted it. The fact that the ordinance was based on a comprehensive plan developed for a larger territorial area does not affect its validity. The plan commission may print the ordinance under section 610 of this chapter as it applies only to certain territorial areas, whenever that would be useful for its enforcement.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.25.*

#### **IC 36-7-4-612**

##### **Zoning ordinance; effect of prior ordinances**

Sec. 612. (a) ADVISORY. Each zoning ordinance and each amendment to it adopted under any prior statute are validated and continued in effect until amended or repealed by action of the

legislative body taken under authority of the advisory planning law. Each zoning ordinance has the same effect even though previously adopted as a comprehensive plan of land use or as a part of such a comprehensive plan.

(b) AREA. Each zoning ordinance that:

(1) was adopted by a county or a participating municipality; and

(2) is in effect at the time of the establishment of a planning department under section 202 of this chapter;

remains in full force and shall be enforced by the planning department under the area planning law until superseded by the zoning ordinance adopted for the jurisdiction under section 606 of the area planning law.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.335-1985, SEC.26; P.L.220-1986, SEC.22.*

### **IC 36-7-4-613**

#### **Repealed**

*(As added by P.L.335-1985, SEC.27. Amended by P.L.320-1995, SEC.7. Repealed by P.L.126-2011, SEC.68.)*

### **IC 36-7-4-614**

#### **Repealed**

*(As added by P.L.335-1985, SEC.28. Amended by P.L.345-1987, SEC.2; P.L.320-1995, SEC.8. Repealed by P.L.126-2011, SEC.68.)*

### **IC 36-7-4-615**

#### **Repealed**

*(As added by P.L.320-1995, SEC.9. Repealed by P.L.126-2011, SEC.68.)*

### **IC 36-7-4-616**

#### **Zoning ordinance; agricultural nonconforming use**

Sec. 616. (a) The definitions used in this section apply only to this section.

(b) As used in this section, "agricultural use" refers to land that is used for:

(1) the production of livestock or livestock products, commercial aquaculture, equine or equine products, land designated as a conservation reserve plan, pastureland, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, tobacco, or other agricultural crops, in the case of land that was not subject to a comprehensive plan or zoning ordinance before the most recent plan or zoning ordinance, including any amendments, was adopted; or

(2) agricultural purposes as defined in or consistent with a comprehensive plan or zoning ordinance that:

(A) the land was subject to; and

(B) was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.

(c) As used in this section, "agricultural nonconforming use" means the agricultural use of land that is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(d) An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status.

(e) A county or municipality may not, through the county or municipality's zoning authority, do any of the following:

(1) Terminate an agricultural nonconforming use if the agricultural nonconforming use has been maintained for at least any three (3) year period in a five (5) year period.

(2) Restrict an agricultural nonconforming use.

(3) Require any of the following for the agricultural nonconforming use of the land:

(A) A variance for the land.

(B) A special exception for the land.

(C) A special use for the land.

(D) A contingent use for the land.

(E) A conditional use for the land.

(f) Notwithstanding subsection (e), this section does not prohibit a county, a municipality, or the state from requiring an agricultural nonconforming use to be maintained and operated in compliance with all:

(1) state environmental and state health laws and rules; and

(2) requirements to which conforming agricultural use land is subject under the county's comprehensive plan or zoning ordinance.

*As added by P.L.113-1998, SEC.1. Amended by P.L.106-1999, SEC.2.*

## **IC 36-7-4-700**

### **700 Series—Subdivision control**

Sec. 700. This series (sections 700 through 799 of this chapter) may be cited as follows: 700 SERIES—SUBDIVISION CONTROL.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.4.*

## **IC 36-7-4-701**

### **Subdivision control ordinance**

Sec. 701. (a) The legislative body shall, in the zoning ordinance adopted under the 600 series of this chapter, determine the zoning districts in which subdivision of land may occur.

(b) The plan commission shall then recommend to each participating legislative body an ordinance containing provisions for

subdivision control, which ordinance shall be adopted, amended, or repealed in the same manner as the zoning ordinance. After the subdivision control ordinance has been adopted and a certified copy of the ordinance has been filed with the county recorder, the plan commission has exclusive control over the approval of all plats and replats involving land covered by the subdivision control ordinance, subject to subsection (c) and subsection (f).

(c) **ADVISORY.** The municipal plan commission has exclusive control over the approval of plats and replats involving unincorporated land within its jurisdiction, unless the legislative body of the county has adopted a subdivision control ordinance covering those lands. In this case, the county plan commission has exclusive control over the approval.

(d) The subdivision control ordinance may provide that the subdivision of land that does not involve the opening of a new public way and that complies in all other respects with the subdivision control ordinance and the zoning ordinance may be granted primary approval by the plat committee without public notice and hearing, subject to appeal to the plan commission. Within ten (10) days after primary approval under this subsection, the plan commission staff shall provide for due notice to interested parties of their right to appeal to the plan commission. The notice shall be given in the manner set forth in section 706(2) and 706(3) of this chapter.

(e) The plan commission may appoint a plat committee to hold hearings on and approve plats and replats on behalf of the commission. The plat committee consists of three (3) or five (5) persons, with at least one (1) of the members being a member of the commission. Each appointment of a member of the plat committee is for a term of one (1) year, but the commission may remove a member from the committee. The commission must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise. The plat committee may take action only by a majority vote.

(f) **AREA.** A participating legislative body may, in the subdivision control ordinance, reserve to itself the power to waive any condition that is imposed upon primary approval of a plat by the plan commission under section 702 of this chapter. The legislative body shall prescribe the procedure under which a person may apply for a waiver of a condition under this subsection.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.5; P.L.335-1985, SEC.29; P.L.320-1995, SEC.10.*

#### **IC 36-7-4-702**

#### **Subdivision control; primary approval of plat; standards of ordinance; requisites; compliance**

Sec. 702. (a) In determining whether to grant primary approval of a plat, the plan commission (or plat committee acting on the

commission's behalf) shall determine if the plat or subdivision qualifies for primary approval under the standards prescribed by the subdivision control ordinance.

(b) The subdivision control ordinance must specify the standards for determining whether a plat qualifies for primary approval. The ordinance must include standards for:

- (1) minimum width, depth, and area of lots in the subdivision;
- (2) public way widths, grades, curves, and the coordination of subdivision public ways with current and planned public ways; and
- (3) the extension of water, sewer, and other municipal services.

The ordinance may also include standards for the allocation of areas to be used as public ways, parks, schools, public and semipublic buildings, homes, businesses, and utilities, and any other standards related to the purposes of this chapter.

(c) The standards fixed in the subdivision control ordinance under subsection (b) may be waived at the discretion of the plan commission (or plat committee acting on the commission's behalf); however, to be approved, the plat must still meet all applicable standards prescribed in the zoning ordinance (other than standards modified by variance in accordance with the 900 series of this chapter). As a condition of granting a waiver under this subsection, the commission or committee may allow or require a commitment to be made under section 1015 of this chapter.

(d) As a condition of primary approval of a plat, the commission or committee may specify:

- (1) the manner in which public ways shall be laid out, graded, and improved;
- (2) a provision for water, sewage, and other utility services;
- (3) a provision for lot size, number, and location;
- (4) a provision for drainage design; and
- (5) a provision for other services as specified in the subdivision control ordinance.

(e) The subdivision control ordinance may not regulate condominiums regulated by IC 32-25.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.6; P.L.2-2002, SEC.109; P.L.126-2011, SEC.17.*

#### **IC 36-7-4-703**

##### **Subdivision control; application for approval of plat; procedure**

Sec. 703. A person desiring the approval of a plat shall submit a written application for approval in accordance with procedures prescribed by the legislative body in the subdivision control ordinance.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.35; Acts 1982, P.L.211, SEC.7.*

#### **IC 36-7-4-704**

**Subdivision control; fees; uniform schedule; payment**

Sec. 704. The plan commission shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee upon the filing of an application for approval.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.36; Acts 1982, P.L.211, SEC.8.*

**IC 36-7-4-705**

**Subdivision control; primary approval of plat; review of application; hearing date**

Sec. 705. Upon receipt of an application for primary approval, the plan commission staff shall review the application for technical conformity with the standards fixed in the subdivision control ordinance. Within thirty (30) days after receipt, the staff shall announce the date for a hearing before the plan commission or plat committee and provide for notice in accordance with section 706 of this chapter. The plan commission shall, by rule, prescribe procedures for setting hearing dates and for the conduct of hearings. *As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.37; Acts 1982, P.L.211, SEC.9.*

**IC 36-7-4-706**

**Subdivision control; application for primary approval; notice of hearing**

Sec. 706. After the staff has announced a date for a hearing before the plan commission or plat committee, it shall:

- (1) notify the applicant in writing;
- (2) give notice of the hearing by publication in accordance with IC 5-3-1; and
- (3) provide for due notice to interested parties at least ten (10) days before the date set for the hearing. The plan commission shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.38; Acts 1982, P.L.211, SEC.10.*

**IC 36-7-4-707**

**Subdivision control; primary approval of plat; findings and decision**

Sec. 707. (a) If, after the hearing, the plan commission or plat committee determines that the application and plat comply with the standards in the subdivision control ordinance, the commission or committee shall make written findings and a decision granting primary approval to the plat. This decision, which must also specify any condition imposed or waiver granted under section 702 of this chapter, must be signed by an official designated in the subdivision control ordinance.

(b) If, after the hearing, the plan commission or plat committee disapproves the plat, the commission or committee shall make written findings that set forth its reasons and a decision denying primary approval and shall provide the applicant with a copy. This decision must be signed by the official designated in the subdivision control ordinance.

(c) This section applies to any subdivision of land, whether or not it is exempted from the notice and hearing requirements of this series under section 701(d) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.11; P.L.126-2011, SEC.18.*

#### **IC 36-7-4-708**

##### **Subdivision control; primary approval or disapproval of plat; appeal to plan commission; procedure; review**

Sec. 708. (a) An applicant or other interested party may appeal to the plan commission the primary approval or disapproval of a plat, or the imposition of a condition on primary approval by the plat committee, in accordance with section 402(d) of this chapter. However, if the plat committee grants primary approval for the subdivision of land without public notice and hearing under section 701(d) of this chapter, an interested party may appeal the approval to the plan commission by filing a notice of appeal with the plan commission not more than five (5) days after a copy of the plat committee's action is mailed to the interested party. Notice shall be given and a hearing held by the commission in the same manner as in the case of the plat committee.

(b) The commission has the same power as the plat committee to approve, disapprove, or impose conditions on the approval of plats.

(c) The primary approval by the commission of a plat must be certified on behalf of the commission by an official designated in the subdivision control ordinance.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.12; P.L.320-1995, SEC.11; P.L.126-2011, SEC.19.*

#### **IC 36-7-4-709**

##### **Subdivision control; secondary approval of plat; determining completion of improvements and installations; requiring land developer to obtain performance bond**

Sec. 709. (a) Secondary approval under section 710 of this chapter may be granted to a plat for a subdivision in which the improvements and installments have not been completed as required by the subdivision control ordinance, if:

(1) the applicant provides a bond, or other proof of financial responsibility as prescribed by the legislative body in the subdivision control ordinance, that:

(A) is an amount determined by the plan commission or plat committee to be sufficient to complete the improvements



and installations in compliance with the ordinance; and  
(B) provides surety satisfactory to the plan commission or plat committee; or

(2) with respect to the installation or extension of water, sewer, or other utility service:

(A) the applicant shows by written evidence that it has entered into a contract with the political subdivision or utility providing the service; and

(B) the plan commission or plat committee determines based on written evidence that the contract provides satisfactory assurance that the service will be installed or extended in compliance with the subdivision control ordinance.

(b) Any money received from a bond or otherwise shall be used only for making the improvements and installments for which the bond or other proof of financial responsibility was provided. This money may be used for these purposes without appropriation. The improvement or installation must conform to the standards provided for such improvements or installations by the municipality in which it is located, as well as the subdivision control ordinance.

(c) The plan commission shall, by rule, prescribe the procedure for determining whether all improvements and installations have been constructed and completed as required by the subdivision control ordinance. The rule must designate the person or persons responsible for making the determination.

(d) As used in this section, "land developer" has the meaning set forth in IC 6-1.1-4-12(a).

(e) As used in this section, "under development" means a situation with respect to land in which a primary plat has been filed and approved and work has commenced to make substantive physical improvements to the land, excluding any work performed for the purpose of preparing the land.

(f) Notwithstanding subsection (a), a local unit may not adopt or enforce an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do any of the following:

(1) Obtain a performance bond or other surety before the date on which the land developer records an approved secondary plat. However, a local unit may require the land developer to obtain a performance bond or other surety before an approved secondary plat is recorded if the area under development is:

(A) within the existing public right-of-way; or

(B) related to erosion control.

(2) Obtain a maintenance bond that has an effective period greater than three (3) years.

(g) After a secondary plat is approved, a local unit may require, as a condition precedent to recording the secondary plat, that the land developer obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in

common areas, and erosion control that:

(1) are:

(A) in the approved development; or

(B) required to service the approved development; and

(2) are included within:

(A) the legal description of the recorded plat; or

(B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.

(h) Any ordinance, rule, or policy requiring a land developer to obtain a performance bond or other surety under subsection (g) must include a provision for:

(1) the release of a performance bond or other surety upon completion to the satisfaction of the local unit of the subject matter upon which the performance bond or other surety was obtained; and

(2) the partial release of the performance bond or other surety on an annual basis in accordance with a partial release schedule agreed to in a signed writing by:

(A) the local unit, or the local unit's designated official or body; and

(B) the land developer or the land developer's designated agent;

before or during development.

(i) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:

(A) the portion of the area or improvement of the project; or

(B) designated section in the project;

being bonded;

(2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation of materials and labor encompassed within the subject matter of the performance bond or other surety; and

(3) may not include any land that is not under development at the time the bond or other surety is required, such as sections of adjacent or contiguous land that remain undeveloped, except to the extent that the land not then under development is used to access the site or provide utilities or other necessary services to the land that is under development.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1982, P.L.211, SEC.13; P.L.337-1985, SEC.1; P.L.126-2011, SEC.20; P.L.105-2015, SEC.1.*

#### **IC 36-7-4-710**

**Subdivision control; secondary approval of plat; authority to**

**grant; time; prerequisites for legal effect of plat**

Sec. 710. (a) The plan commission may grant secondary approval of a plat under this section or may delegate to the plat committee or staff the authority to grant such secondary approvals.

(b) Secondary approval may be granted, after expiration of the time provided for appeal under section 708 of this chapter.

(c) No notice or hearing is required, and the provisions of this series concerning notice and hearing do not apply to secondary approvals.

(d) A plat of a subdivision may not be filed with the auditor, and the recorder may not record it, unless it has been granted secondary approval and signed and certified by the official designated in the subdivision control ordinance governing the area. The filing and recording of the plat is without legal effect unless approved by the commission, committee, or staff.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.39; Acts 1982, P.L.211, SEC.14; P.L.126-2011, SEC.21.*

**IC 36-7-4-711**

**Vacation of plats; alternate procedure; petition; notice and hearing**

Sec. 711. (a) The plan commission (or plat committee acting on its behalf), proceeding in accordance with IC 36-7-3-10 or with this section, has exclusive control over the vacation of plats or parts of plats.

(b) In a case in which not all the owners of land in a plat are in agreement regarding a proposed vacation, this section provides an alternate procedure under which one (1) or more owners of land in the plat may file with the plan commission a petition to vacate all the plat or only that part of the plat that pertains to land owned by the petitioner or petitioners. A petition under this section must:

- (1) state the reasons for and the circumstances prompting the request;
- (2) specifically describe the property in the plat proposed to be vacated; and
- (3) give the name and address of every other owner of land in the plat.

(c) Subject to section 714 of this chapter, a petition under this section may also include a request to vacate any recorded covenants filed as a part of the plat.

(d) Not more than thirty (30) days after receipt of a petition under this section, the plan commission staff shall announce the date for the hearing before the plan commission (or plat committee acting on the plan commission's behalf). The plan commission shall adopt rules prescribing procedures for setting hearing dates and for providing other notice as may be required in accordance with this chapter. The petitioner shall pay all expenses of providing the notice required by this subsection.

(e) The plan commission shall adopt rules prescribing procedures for the conduct of the hearing, which must include a provision giving every other owner of land in the plat an opportunity to comment on the petition.

(f) After hearing the petition, the plan commission or plat committee shall approve or disapprove the request. The commission or committee may approve the vacation of all or part of a plat only upon a determination that:

- (1) conditions in the platted area have changed so as to defeat the original purpose of the plat;
- (2) it is in the public interest to vacate all or part of the plat; and
- (3) the value of that part of the land in the plat not owned by the petitioner will not be diminished by the vacation.

(g) The commission or committee may impose reasonable conditions as part of any approval. The commission or committee shall furnish a copy of the commission's or committee's decision to the county recorder for recording.

(h) An applicant or other interested party may appeal the approval or disapproval of a vacation by the plat committee in the manner prescribed by section 402(d) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.220-1986, SEC.23; P.L.126-2011, SEC.22.*

#### **IC 36-7-4-712**

##### **Plat committee; exclusive control over vacation of plats or public ways; rules; public interest; appeals**

Sec. 712. (a) METRO. The plat committee has exclusive control over the vacation of:

- (1) plats or parts of plats; and
- (2) public ways, easements, or public places, or parts of any of them, whether or not they are included in an approved plat;

in the county. The plat committee may adopt rules governing the procedure for these vacations. The vacation of public ways, easements, or public places, or parts of any of them may be made only upon a finding by the plat committee that the vacation is in the public interest. The plat committee may accomplish the vacation of plats or parts of plats by proceeding in accordance with IC 36-7-3-10 or section 711 of this chapter.

(b) METRO. An applicant or other interested party may appeal the approval or disapproval of a vacation in the manner prescribed by section 402(d) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.40; P.L.220-1986, SEC.24; P.L.2-1989, SEC.26; P.L.126-2011, SEC.23.*

#### **IC 36-7-4-713**

##### **Repealed**

*(Repealed by P.L.320-1995, SEC.44.)*

**IC 36-7-4-714****Determination required to vacate recorded covenant filed with plat**

Sec. 714. The vacation of all or part of a plat may include the vacation of any recorded covenants filed with the plat, but only upon a determination that:

- (1) the platted area is within an area needing redevelopment and the covenant vacation would promote a recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;
- (2) the covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger; or
- (3) the covenant vacation is needed to lessen or avoid congestion in the public ways.

*As added by P.L.126-2011, SEC.24.*

**IC 36-7-4-715****Final decisions of plan commission subject to review**

Sec. 715. (a) The following are final decisions of the plan commission that may be reviewed as provided by section 1016 of this chapter:

- (1) Primary approval or disapproval of a plat.
- (2) Imposition of a condition on primary approval of a plat.
- (3) Approval or disapproval of the vacation of all or part of a plat.
- (4) Approval or disapproval of the vacation of any recorded covenants filed with the plat.
- (5) Imposition of a condition on approval of the vacation of all or part of a plat (which may include the vacation of any recorded covenants filed with the plat).

(b) The plan commission may adopt a rule to limit further consideration for up to one (1) year after its disapproval, of a plat or vacation request that is disapproved under section 707, 708, 711, 712, or 714 of this chapter.

*As added by P.L.126-2011, SEC.25.*

**IC 36-7-4-800****800 Series—Improvement location permit**

Sec. 800. This series (sections 800 through 899 of this chapter) may be cited as follows: 800 SERIES—IMPROVEMENT LOCATION PERMIT.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-801****Improvement location permit; requirement**

Sec. 801. (a) ADVISORY. A structure may not be located and an

improvement location permit for a structure on platted or unplatted land may not be issued unless the structure and its location conform to the municipal zoning ordinance. However, if the land is unincorporated land that lies within a county that has adopted a zoning ordinance, then the municipal zoning ordinance does not apply and the structure must conform to the county zoning ordinance. A municipality, having adopted a zoning ordinance, may issue and control improvement location permits on unincorporated lands within the jurisdiction of its municipal plan commission if the lands lie within a county that has not adopted a zoning ordinance.

(b) AREA—METRO. A zoning ordinance, a subdivision ordinance, or a separate ordinance may require the procurement of:

- (1) an improvement location permit for the erection, alteration, or repair of any structure on platted or unplatted land; and
- (2) an occupancy permit for the use of any structure or land regulated by a zoning ordinance, subdivision ordinance, thoroughfare ordinance, or other ordinance relating to land use.

If such a provision is adopted, a structure may not be located and a permit may not be issued unless the use, character, and location of the structure is in conformity with the applicable ordinance.

(c) AREA. The ordinance under subsection (b) must contain a schedule of fees and must provide that the unit that issues the permit shall receive the fee and pay it into its general fund.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.220-1986, SEC.25.*

#### **IC 36-7-4-802**

##### **Improvement location permit; authority to issue**

Sec. 802. (a) ADVISORY. The ordinance may designate the official or employee of the municipality or county who may issue improvement location permits within the jurisdiction of the advisory plan commission and in conformance with the zoning ordinance.

(b) AREA. The authority to issue the improvement location permit and the occupancy permit may be delegated by the ordinance to the area plan commission or to other appropriate officers of the county or municipality. If the authority is delegated in part to officers of a municipality, they may not issue permits for structures to be erected outside the corporate boundaries of the municipality.

(c) METRO. The metropolitan development commission shall issue improvement location permits and occupancy permits. The commission may delegate this duty to any municipal or county officers.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.220-1986, SEC.26.*

#### **IC 36-7-4-803**

##### **Bonds of contractors, engineers, and surveyors; enforcement of zoning or subdivision ordinance**

Sec. 803. (a) AREA—METRO. As an additional means of insuring the enforcement of a zoning or subdivision ordinance, a legislative body may adopt, as a part of either ordinance or by separate ordinance, provisions requiring building contractors to furnish an annual bond of one thousand dollars (\$1,000). This bond is to insure that if the construction does not comply with the zoning or subdivision ordinance that it can be made to conform without cost to the municipality, the county, or the person for whom the construction was undertaken.

(b) METRO. An ordinance under subsection (a) may also require professional engineers and land surveyors to furnish an annual bond of one thousand dollars (\$1,000) to insure that their plans and surveys conform to the zoning or subdivision ordinance.

(c) METRO. A person constructing a building for his own use and occupancy as a residence or in connection with his residence is exempt from any provisions adopted under subsection (a).

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-804**

##### **Improvement location or building permit; eligibility; violations of zoning or subdivision ordinance; hearing**

Sec. 804. (a) METRO. After a building contractor violates a zoning or subdivision ordinance three (3) times in a calendar year, he is ineligible to receive an improvement location or building permit for one (1) year, beginning on the date of the third violation. Whenever a person for whom a structure is to be built applies for a permit, he must disclose under the penalties for perjury the identity of his contractor; such a person is eligible to receive a permit only if his contractor is eligible.

(b) METRO. A determination by the metropolitan development commission, after a hearing at which the contractor may be represented by counsel and may present evidence, is conclusive evidence of a violation under subsection (a).

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-900**

##### **900 Series—Board of zoning appeals**

Sec. 900. This series (sections 900 through 999 of this chapter) may be cited as follows: 900 SERIES—BOARD OF ZONING APPEALS.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-901**

##### **Board of zoning appeals; establishment; divisions; jurisdiction; continuation of certain boards**

Sec. 901. (a) As a part of the zoning ordinance, the legislative body shall establish a board of zoning appeals.

(b) The board of zoning appeals is composed of one (1) division,

unless the zoning ordinance is amended under this subsection. Whenever considered desirable, the zoning ordinance may be amended to establish an additional one (1), two (2), or three (3) divisions of the board of zoning appeals.

(c) After January 1, 1984, whenever any divisions of the board of zoning appeals are established or reestablished by the zoning ordinance, the ordinance must provide for each division to consist of five (5) members appointed in accordance with section 902 of this chapter.

(d) The board of zoning appeals shall be known as:

- (1) the advisory board of zoning appeals (under the advisory planning law);
- (2) the area board of zoning appeals (under the area planning law); or
- (3) the metropolitan board of zoning appeals (under the metropolitan development law).

(e) Except as provided in this section, a board of zoning appeals has territorial jurisdiction over all the land subject to the zoning ordinance, and if the board has more than one (1) division, all divisions have concurrent jurisdiction within that territory.

(f) ADVISORY—AREA. The zoning ordinance may provide that any additional division of the board of zoning appeals, having been established under subsection (b), is to have only limited territorial jurisdiction. The zoning ordinance must describe the limits of that division's territorial jurisdiction and specify whether that division has exclusive or concurrent jurisdiction within that territory.

(g) METRO. Any municipal board of zoning appeals that was established by an excluded city under IC 18-7-2-61 (before its repeal on September 1, 1981) continues as the board of zoning appeals for that municipality. A board of zoning appeals for an excluded city has exclusive territorial jurisdiction within the corporate boundaries of that municipality. All divisions of the metropolitan board of zoning appeals have concurrent territorial jurisdiction throughout the remainder of the county. The legislative body of the consolidated city may adopt ordinances to regulate the time of the meetings and the voting procedures of the metropolitan board of zoning appeals.

(h) ADVISORY. Any board of zoning appeals that was established under IC 18-7-3-11 continues as the board of zoning appeals for that jurisdiction, until otherwise provided by the zoning ordinance.

(i) AREA. Any board of zoning appeals that was established under the advisory planning law and continued in existence under the area planning law continues as the board of zoning appeals for that jurisdiction, until otherwise provided by the zoning ordinance.

(j) AREA. Any board of zoning appeals that was established under the area planning law as a seven (7) member board continues as the area board of zoning appeals, until otherwise provided by the zoning ordinance.



(k) METRO. The zoning ordinance may provide that a historic preservation commission created under IC 36-7-11.1-3 may exercise the powers of a board of zoning appeals within a historic area or historic zoning district established under IC 36-7-11.1-6. However, this subsection does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a variance by either:

- (1) a board of zoning appeals; or
- (2) a historic preservation commission exercising the powers of a board of zoning appeals.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.1; P.L.3-1990, SEC.125; P.L.321-1995, SEC.4; P.L.164-1995, SEC.20.*

#### **IC 36-7-4-901.5**

##### **Reorganized units; board of zoning appeals required if advisory plan commission established**

Sec. 901.5. (a) If an advisory plan commission is established under section 202.5 of this chapter by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter, the legislative body of the unit shall establish a board of zoning appeals.

(b) A board of zoning appeals established under this section:

- (1) shall exercise the board's powers and duties under this chapter within the unit in the same manner that a municipal board of zoning appeals established under this chapter exercises powers and duties under this chapter for a municipality; and
- (2) may not exercise the board's powers and duties under this chapter within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5).

(c) Notwithstanding any other law, if the legislative body of a unit described in IC 36-7-2-1(b) establishes a board of zoning appeals under this section, the legislative body of the unit shall, by resolution or in the unit's plan of reorganization under IC 36-1.5, determine:

- (1) the number of members to be appointed to the unit's board of zoning appeals;
- (2) the person or entity that shall appoint or remove those members;
- (3) any required qualifications for those members; and
- (4) the terms of those members.

*As added by P.L.202-2013, SEC.35.*

#### **IC 36-7-4-902**

##### **Board of zoning appeals; members; number; appointment**

Sec. 902. (a) ADVISORY. Each division of the advisory board of zoning appeals consists of five (5) members as follows:

- (1) Three (3) citizen members appointed by the executive of the

municipality or county, of whom one (1) must be a member of the plan commission and two (2) must not be members of the plan commission.

(2) One (1) citizen member appointed by the fiscal body of the municipality or county, who must not be a member of the plan commission.

(3) One (1) member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

(b) ADVISORY. In each county having a metropolitan plan commission, subsection (a) does not apply. In such a county, each division of the advisory board of zoning appeals consists of five (5) members as follows:

(1) Two (2) members, of whom no more than one (1) may be of the same political party, appointed by the county legislative body.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) only of these members must be a member of the plan commission.

(c) AREA. When the area board of zoning appeals was established before January 1, 1984, as a seven (7) member board, the board consists of seven (7) members as follows:

(1) Two (2) citizen members appointed by the area plan commission from its membership, one (1) of whom must be a municipal representative and the other must be a county representative.

(2) Three (3) citizen members, who may not be members of any plan commission, appointed by the executive of the largest municipality in the county. However, if there are two (2) or more municipalities having a population of at least twenty thousand (20,000) in the county, the executive of the largest municipality shall appoint two (2) citizen members and the executive of the second largest municipality shall appoint one (1) citizen member. Furthermore, if there are no cities in the county participating in the commission, then the three (3) members appointed under this subdivision shall be appointed as follows:

(A) One (1) member appointed by the county executive.

(B) One (1) member appointed by the county fiscal body.

(C) One (1) member appointed by the legislative bodies of those towns participating in the commission.

(3) Two (2) citizen members, who may not be members of any plan commission, appointed by the county legislative body.

(d) AREA. Except as provided in subsection (c), each division of the area board of zoning appeals consists of five (5) members as follows:

(1) One (1) citizen member appointed by the area plan commission from its membership.

(2) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the largest municipality in the county participating in the commission.

(3) Two (2) citizen members, of whom one (1) must be a member of the area plan commission and one (1) must not be a member of any plan commission, appointed by the county legislative body.

(4) One (1) citizen member, who may not be a member of any plan commission, appointed by the executive of the second largest municipality in the county participating in the commission. However, if there is only one (1) municipality in the county participating in the commission, then the county legislative body shall make this appointment.

(e) METRO. Each division of the metropolitan board of zoning appeals consists of five (5) members as follows:

(1) Two (2) citizen members appointed by the executive of the consolidated city.

(2) Two (2) citizen members appointed by the legislative body of the consolidated city.

(3) One (1) citizen member, who may also be a member of the metropolitan development commission, appointed by the commission.

(f) METRO. The municipal board of zoning appeals for an excluded city consists of five (5) members as follows:

(1) Three (3) citizen members appointed by the legislative body of the excluded city.

(2) Two (2) citizen members, who may also be members of the metropolitan development commission, appointed by the commission.

(g) Whenever the zoning ordinance provides for a certain division of the board of zoning appeals to have limited territorial jurisdiction, it must also provide for that division to consist of members who are all residents of that limited territory. Those members shall be appointed in the same manner that is prescribed by subsection (a) for divisions of an advisory board of zoning appeals, but if the plan commission is unable to make its appointment in that manner, the appointment shall be made instead by the legislative body.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.2; P.L.320-1995, SEC.12.*

### **IC 36-7-4-903**

#### **Board of zoning appeals; additional division or member required for unincorporated jurisdictional area**

Sec. 903. ADVISORY. (a) When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 or 1208 of this chapter,

one (1) of the following must occur:

(1) An additional division of the board of zoning appeals shall be established under section 901(b) of this chapter that will have territorial jurisdiction only in the unincorporated area. The division must consist only of:

(A) residents of the unincorporated area; or

(B) individuals who reside in the county and also own real property within the unincorporated area.

However, at least a majority of the members appointed to the division must be residents of the unincorporated area.

(2) The municipal plan commission shall designate, as its appointment to the municipal board of zoning appeals under section 902(a)(3) of this chapter one (1) of the additional citizen members who were appointed under section 214(a), 1210(a), or 1210.5(c)(3) of this chapter to the plan commission to represent the unincorporated area. The citizen shall be appointed for a term of two (2) years. The citizen is entitled to participate and vote in all deliberations of the municipal board of zoning appeals.

(b) Notwithstanding section 902(g) of this chapter, if the zoning ordinance provides for an additional division of the board of zoning appeals under subsection (a)(1), the ordinance may also provide for the appointment of one (1) or more members of that division by elected officials of the county or township.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.3; P.L.216-1999, SEC.4; P.L.32-2004, SEC.3; P.L.126-2011, SEC.26.*

#### **IC 36-7-4-904**

##### **Repealed**

*(Repealed by P.L.357-1983, SEC.22.)*

#### **IC 36-7-4-905**

##### **Board of zoning appeals; membership; restrictions**

Sec. 905. (a) None of the members of a board of zoning appeals may hold:

(1) an elected office (as defined in IC 3-5-2-17); or

(2) any other appointed office, except as permitted by section 902 of this chapter, in municipal, county, or state government.

(b) A member of the board of zoning appeals must meet one (1) of the following requirements:

(1) The member must be a resident of the jurisdictional area of the board.

(2) The member must be a resident of the county and also an owner of real property located in whole or in part in the jurisdictional area of the board.

However, at least a majority of the total number of citizen members appointed to the board of zoning appeals must be residents of the

jurisdictional area of the board of zoning appeals. The board shall determine whether a member meets all applicable residency requirements for appointment in accordance with uniform rules prescribed by the board.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.41; P.L.126-2011, SEC.27.*

#### **IC 36-7-4-906**

##### **Board of zoning appeals; members; terms; removal**

Sec. 906. (a) ADVISORY—AREA. When an initial term of office expires, each new appointment is for a term of four (4) years.

(b) ADVISORY—AREA. Upon the establishment of a division of the board of zoning appeals, the members shall initially be appointed as provided in the zoning ordinance for the following terms of office:

- (1) One (1) for a term of one (1) year.
- (2) One (1) for a term of two (2) years.
- (3) One (1) for a term of three (3) years.
- (4) Two (2) for a term of four (4) years.

(c) ADVISORY—AREA. Under subsection (b), each term expires on the first Monday of January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(d) METRO. Each appointment of a member of a division of a board of zoning appeals is for a term of one (1) year.

(e) METRO. The appointing authority may remove a member from the metropolitan board of zoning appeals. The appointing authority must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise.

(f) ADVISORY—AREA. The appointing authority may remove a member from the board of zoning appeals for cause. The appointing authority must mail notice of the removal, along with written reasons for the removal, to the member at his residence address. A member who is removed may, within thirty (30) days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county.

(g) A member of a board of zoning appeals serves until his successor is appointed and qualified. A member is eligible for reappointment.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.42; Acts 1982, P.L.33, SEC.31; P.L.357-1983, SEC.4.*

#### **IC 36-7-4-907**

##### **Board of zoning appeals; members; vacancies**

Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate

with the board in any hearing or decision if the regular member it has appointed has a disqualification under section 909 of this chapter or is otherwise unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) A member of the board of zoning appeals who misses three (3) consecutive regular meetings of the board may be treated as if the member had resigned, at the discretion of the appointing authority.

(c) Members serving in any division of the board of zoning appeals may also serve as alternate members for the other divisions of the board of zoning appeals. Whenever regular and alternate members serving in a particular division are unavailable, the chairperson or vice chairperson of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.43; P.L.357-1983, SEC.5; P.L.345-1987, SEC.3; P.L.226-1997, SEC.3; P.L.126-2011, SEC.28.*

#### **IC 36-7-4-908**

##### **Repealed**

*(Repealed by Acts 1981, P.L.310, SEC.94.)*

#### **IC 36-7-4-909**

##### **Board of zoning appeals; members; conflict of interest; disqualification**

Sec. 909. (a) A member of a board of zoning appeals is disqualified and may not participate in a hearing or decision of that board concerning a zoning matter if the member:

(1) is biased or prejudiced or otherwise unable to be impartial;  
or

(2) has a direct or indirect financial interest in the outcome of the hearing or the decision.

(b) The board shall enter in the board's records:

(1) the fact that a regular member has such a disqualification;  
and

(2) the name of the alternate member, if any, who participates in the hearing or decision in place of the regular member.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.44; P.L.357-1983, SEC.6; P.L.126-2011, SEC.29.*

#### **IC 36-7-4-910**

##### **Board of zoning appeals; quorum**

Sec. 910. A quorum consists of a majority of the entire membership of the board of zoning appeals.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-911**

**Board of zoning appeals; official action**

Sec. 911. Action of the board of zoning appeals is not official, unless it is authorized by a majority of the entire membership of the board.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-912****Board of zoning appeals; chairman and vice chairman**

Sec. 912. At the first meeting of each year, the board of zoning appeals shall elect a chairman and vice chairman from its members. The vice chairman may act as chairman during the absence or disability of the chairman.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-913****Board of zoning appeals; secretary and employees**

Sec. 913. The board of zoning appeals may appoint a secretary and such employees as are necessary for the discharge of its duties.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.45.*

**IC 36-7-4-914****Board of zoning appeals; facilities**

Sec. 914. The plan commission shall provide for suitable facilities for the holding of board of zoning appeals' hearings and for the preserving of records, documents, and accounts.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.7.*

**IC 36-7-4-915****Board of zoning appeals; minutes and records**

Sec. 915. The board of zoning appeals shall keep minutes of its proceedings and record the vote on all actions taken. All minutes and records shall be filed in the office of the board and are public records. The board shall in all cases heard by it make written findings of fact.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.46.*

**IC 36-7-4-916****Board of zoning appeals; rules**

Sec. 916. (a) The board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance, concerning:

- (1) the filing of appeals;
- (2) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- (3) the giving of notice;
- (4) the conduct of hearings; and

(5) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

(b) The board of zoning appeals may also adopt rules providing for:

(1) the allocation of cases filed among the divisions of the board of zoning appeals; and

(2) the fixing of dates for hearings by the divisions.

(c) Rules adopted by the board of zoning appeals shall be printed and be made available to all applicants and other interested persons.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.47; Acts 1982, P.L.212, SEC.4; P.L.357-1983, SEC.8.*

#### **IC 36-7-4-917**

##### **Board of zoning appeals; appropriations**

Sec. 917. The fiscal body of the municipality or county, as the case may be, may appropriate under section 308 of this chapter such amounts as are necessary to carry out the duties of the board of zoning appeals.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.357-1983, SEC.9.*

#### **IC 36-7-4-918**

##### **Repealed**

*(Repealed by P.L.357-1983, SEC.22.)*

#### **IC 36-7-4-918.1**

##### **Board of zoning appeals; review of orders, requirements, decisions, or determinations**

Sec. 918.1. A board of zoning appeals shall hear and determine appeals from and review:

(1) any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance;

(2) any order, requirement, decision, or determination made by an administrative board or other body except a plan commission in relation to the enforcement of the zoning ordinance; or

(3) any order, requirement, decision, or determination made by an administrative board or other body except a plan commission in relation to the enforcement of an ordinance adopted under this chapter requiring the procurement of an improvement location or occupancy permit.

*As added by P.L.357-1983, SEC.10.*

#### **IC 36-7-4-918.2**

##### **Board of zoning appeals; special exceptions and certain uses; approval or denial**

Sec. 918.2. A board of zoning appeals shall approve or deny all:



- (1) special exceptions;
- (2) special uses;
- (3) contingent uses; and
- (4) conditional uses;

from the terms of the zoning ordinance, but only in the classes of cases or in the particular situations specified in the zoning ordinance. The board may impose reasonable conditions as a part of its approval.

*As added by P.L.357-1983, SEC.11.*

### **IC 36-7-4-918.3**

#### **Board of zoning appeals; variance from use district or classification**

Sec. 918.3. AREA. Neither the area board of zoning appeals nor any other board of zoning appeals continued in existence under the area planning law may grant a variance from a use district or classification under the area planning law.

*As added by P.L.357-1983, SEC.12.*

### **IC 36-7-4-918.4**

#### **Board of zoning appeals; variance of use**

Sec. 918.4. ADVISORY—METRO. A board of zoning appeals shall approve or deny variances of use from the terms of the zoning ordinance. The board may impose reasonable conditions as a part of its approval. A variance may be approved under this section only upon a determination in writing that:

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- (3) the need for the variance arises from some condition peculiar to the property involved;
- (4) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- (5) the approval does not interfere substantially with the comprehensive plan adopted under the 500 series of this chapter.

*As added by P.L.357-1983, SEC.13.*

### **IC 36-7-4-918.5**

#### **Board of zoning appeals; variance from development standards**

Sec. 918.5. (a) A board of zoning appeals shall approve or deny variances from the development standards (such as height, bulk, or area) of the zoning ordinance. The board may impose reasonable conditions as a part of the board's approval. A variance may be approved under this section only upon a determination in writing

that:

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- (3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. However, the zoning ordinance may establish a stricter standard than the "practical difficulties" standard prescribed by this subdivision.

(b) Before approval of a proposal involving a structure regulated under IC 8-21-10 may become effective, the board of zoning appeals must have received:

- (1) a copy of:
  - (A) the permit for the structure issued by the Indiana department of transportation; or
  - (B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and
- (2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

(c) Only the plan commission (or plat committee acting on the commission's behalf) may grant a waiver from standards that are fixed in the subdivision control ordinance, as provided in section 702(c) of this chapter.

*As added by P.L.357-1983, SEC.14. Amended by P.L.54-2002, SEC.6; P.L.126-2011, SEC.30.*

#### **IC 36-7-4-918.6**

##### **Board of zoning appeals in certain counties; special exceptions, uses, and variances**

Sec. 918.6. (a) This section applies to the following:

- (1) A municipality in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).
- (2) A county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

(b) **ADVISORY—AREA.** Notwithstanding sections 918.2, 918.4, and 918.5 of this chapter, a zoning or subdivision control ordinance shall require that the board of zoning appeals submit any of the following petitions to the legislative body for approval or disapproval:

- (1) Special exceptions.
- (2) Special uses.
- (3) Use variances.

(c) **ADVISORY—AREA.** The board of zoning appeals shall file

a petition under this section with the clerk of the legislative body with:

- (1) a favorable recommendation;
- (2) an unfavorable recommendation; or
- (3) no recommendation.

(d) ADVISORY—AREA. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the petition at its first regular meeting after the board of zoning appeals files its recommendation.

(e) ADVISORY—AREA. A petition is granted or denied when the legislative body votes on the petition as follows:

- (1) In a county described in subsection (a)(1), the legislative body shall vote on the petition within ninety (90) days after the board of zoning appeals makes its recommendation. If the legislative body does not vote to deny the petition within ninety (90) days, the petition is considered approved.
- (2) In a county described in subsection (a)(2), the legislative body shall vote on the petition within sixty (60) days after the board of zoning appeals makes its recommendations. If the legislative body does not vote to deny the petition within sixty (60) days, the petition is approved.

(f) ADVISORY—AREA. If the legislative body approves a petition, it must make the determination in writing as required under section 918.2, 918.4, or 918.5 of this chapter or as required by the zoning ordinance.

*As added by P.L.304-1989, SEC.1. Amended by P.L.12-1992, SEC.164; P.L.167-1994, SEC.2; P.L.119-2012, SEC.194; P.L.10-2015, SEC.1.*

### **IC 36-7-4-918.8**

#### **Board of zoning appeals; metropolitan development commission; exercise of powers; variances, exceptions, or uses**

Sec. 918.8. (a) METRO. In connection with its consideration of a proposed ordinance for the amendment of the zoning ordinance proposed under section 607(c)(2) of this chapter, the metropolitan development commission may exercise the powers of the metropolitan board of zoning appeals for the purpose of approving or denying:

- (1) a variance from the development standards of the zoning ordinance; or
- (2) a special exception, special use, contingent use, or conditional use from the terms of the zoning ordinance.

(b) METRO. The commission may, by rule, establish procedures so that the power of the commission to recommend amendment of zoning ordinances and the power of the commission to approve and deny these variances, exceptions, and uses may be exercised concurrently. These rules may be inconsistent with the 900 series to the extent reasonably necessary to allow the commission to exercise

the power to approve or deny these variance, exception, and use petitions.

(c) METRO. When acting under this section, the commission may:

- (1) vote on the amendment to the zoning ordinance and the variance, exception, or use petition at the same time; and
- (2) condition the approval of variance, exception, or use in such a manner that it takes effect when the recommended ordinance amendment is approved by the legislative body.

(d) METRO. Section 922 of this chapter does not apply to variances, exceptions, and uses approved under this section.

*As added by P.L.357-1983, SEC.15.*

### **IC 36-7-4-919**

#### **Board of zoning appeals; appeal to board; grounds; record; decision**

Sec. 919. (a) An appeal filed with the board of zoning appeals must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the board of zoning appeals by rule.

(b) The administrative official, hearing officer, administrative board, or other body from whom the appeal is taken shall, on the request of the board of zoning appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.

(c) Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of subsection (b).

(d) Upon appeal, the board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the board has all the powers of the official, officer, board, or body from which the appeal is taken.

(e) The board shall make a decision on any matter that it is required to hear under the 900 series either:

- (1) at the meeting at which that matter is first presented; or
- (2) at the conclusion of the hearing on that matter, if it is continued.

(f) Within five (5) days after making any decision under the 900 series, the board of zoning appeals shall file in the office of the board a copy of its decision.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.49; P.L.357-1983, SEC.16.*

### **IC 36-7-4-920**

#### **Board of zoning appeals, hearing on administrative appeals, exceptions, uses, and variances; notice; appearance**

Sec. 920. (a) The board of zoning appeals shall fix a reasonable time for the hearing of administrative appeals, exceptions, uses, and

variances.

(b) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given at least ten (10) days before the date set for the hearing.

(c) The party taking the appeal, or applying for the exception, use, or variance, may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.

(d) The board shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.

(e) The staff (as defined in the zoning ordinance), if any, may appear before the board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.

(f) Other persons may appear and present relevant evidence.

(g) A person may not communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board. Not less than five (5) days before the hearing, however, the staff (as defined in the zoning ordinance), if any, may file with the board a written statement setting forth any facts or opinions relating to the matter.

(h) The board may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address. If the written appearance is entered more than four (4) days before the hearing, the board may also require the petitioner to furnish each adverse party with a copy of the petition and a plot plan of the property involved.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.50; Acts 1982, P.L.212, SEC.6; P.L.357-1983, SEC.17.*

#### **IC 36-7-4-921**

##### **Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.51; P.L.357-1983, SEC.18; P.L.320-1995, SEC.13. Repealed by P.L.126-2011, SEC.68.)*

#### **IC 36-7-4-922**

##### **Board of zoning appeals; procedures for appeal to metropolitan development commission**

Sec. 922. (a) METRO. Either of the following may appeal to the metropolitan development commission the following decisions of a board of zoning appeals:

(1) An official designated by the metropolitan development commission. An official may appeal any decision regarding:

(A) an administrative appeal; or

(B) approving:

(i) a special exception;

- (ii) a special or conditional use; or
- (iii) a variance from the terms of the zoning ordinance.

(2) A member of the legislative body of the city and county in whose district the parcel of real property under consideration is located. A legislative body member in whose district the parcel of real property under consideration is located may appeal any decision approving, denying, or otherwise concerning a variance of use from the terms of the zoning ordinance that affects only real property located outside the corporate boundaries of an excluded city.

The official or the legislative body member must file in the office of the department of metropolitan development a notice of appeal within five (5) days after the board files a copy of the decision in the office of the board. However, if a representative of the department of metropolitan development or the legislative body member appears at the hearing at which the administrative appeal is decided or the special exception, special or conditional use, or variance is approved or denied, then the official or legislative body member must file the notice of appeal within five (5) days after the board has rendered its decision. The notice must certify that the decision raises a substantial question of zoning policy appropriate for consideration by the commission. The commission shall hear the appeal at its next regular meeting held not less than five (5) days after the notice of appeal is filed.

(b) METRO. In hearing appeals under this section, the metropolitan development commission sits as a board of zoning appeals and shall be treated as if it is a board for purposes of this section. The commission may accept into evidence the written record, if any, of the hearing before the board of zoning appeals, along with other evidence introduced by the staff or interested parties. The commission shall consider the matter de novo, but the decision of the board is considered affirmed unless two-thirds (2/3) of the commission members voting vote to deny the administrative appeal, exception, use, or variance.

(c) METRO. Although persons other than the designated official or legislative body member may not appeal a decision of a board of zoning appeals to the metropolitan development commission, they may appear as interested parties in appeals under this section. No public notice need be given of the hearing of an appeal under this section, but the official or legislative body member shall promptly mail notice of the subject of the appeal and date and place of the hearing to each adverse party. However, if the record of the board shows that more than three (3) proponents or more than three (3) remonstrators appeared, then the official or legislative body member need mail notice only to the first three (3) of each as disclosed by the record.

(d) The metropolitan development commission shall give strong consideration to the first continuance of an appeals hearing held

under this section that is filed by a member of the legislative body of the city and county.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.52; Acts 1982, P.L.212, SEC.7; P.L.357-1983, SEC.19; P.L.320-1995, SEC.14; P.L.88-2014, SEC.3.*

### **IC 36-7-4-923**

#### **Alternate procedure for expedient disposition of petitions; hearing officers**

Sec. 923. (a) This section allows the establishment of an alternate procedure under which there can be a more expedient disposition of certain matters that otherwise would be heard by a board of zoning appeals. When authorized by ordinance or by rules of the plan commission, a hearing officer has the power of a board of zoning appeals to approve or deny, through the alternate procedure allowed by this section:

- (1) a variance from the development standards of the zoning ordinance in accordance with section 918.5 of this chapter; or
- (2) a special exception, special use, contingent use, or conditional use from the terms of the zoning ordinance in accordance with section 918.2 of this chapter; or

(3) a variance of use from the terms of the zoning ordinance in accordance with section 918.4 of this chapter. However, the authority of a hearing officer under this subdivision may be exercised only if:

(A) the area planning law is not applicable; and

(B) the variance of use would allow all of the following:

- (i) The expansion of a use currently existing on the tract.
- (ii) A use that is consistent with the comprehensive plan.

(b) All requirements for variances, exceptions, and uses imposed by the 900 series of this chapter apply to the alternate procedure, except to the extent that a provision of section 924 of this chapter imposes a different requirement.

(c) The alternate procedure does not apply in any excluded city as described in IC 36-3-1-7. Sections 919(f) and 922 of this chapter do not apply to the alternate procedure.

(d) The hearing officer (who may be a board member, a staff member, or any other person) shall be appointed by the plan commission. More than one (1) hearing officer may be appointed. A hearing officer may be removed from the officer's responsibilities at any time by the plan commission.

(e) The plan commission may adopt other rules or recommend ordinances for the alternate procedure not inconsistent with the 900 series of this chapter. These rules or ordinances may specify the period during which the staff may indicate whether the staff objects to the proposed variance, exception, or use. These rules or ordinances may also provide for public notice and due notice to interested parties in accordance with section 920(b), 920(c), and

920(d) of this chapter, but the rules or ordinances may, because of the nature of the petitions heard under the alternate procedure, provide for a less inclusive definition of "interested person" and provide for a quicker and less burdensome method of giving notice to interested persons than rules applicable to petitions not filed under the alternate procedure.

(f) METRO. For purposes of subsection (d), the director of the department of metropolitan development shall nominate, and the plan commission shall appoint, all hearing officers. Such a hearing officer may be removed from the officer's responsibilities at any time by either the director or the plan commission.

(g) METRO. The plan commission may, if requested by a historic preservation commission created under IC 36-7-11.1-3, appoint:

- (1) a member of the historic preservation commission;
- (2) a member of the historic preservation staff; or
- (3) a person who is an employee of the department of metropolitan development;

as a hearing officer to act in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing officer may be removed from the hearing officer's responsibilities at any time by either the historic preservation commission or the plan commission.

*As added by Acts 1982, P.L.212, SEC.8. Amended by P.L.357-1983, SEC.20; P.L.320-1995, SEC.15; P.L.321-1995, SEC.5; P.L.126-2011, SEC.31.*

#### **IC 36-7-4-924**

##### **Alternate procedure for disposition of petitions or applications; objections; commitments; appeals**

Sec. 924. (a) In establishing the alternate procedure under section 923 of this chapter, the plan commission may adopt rules or recommend ordinances:

- (1) limiting the kinds of variance, special exception, special use, contingent use, or conditional use petitions or applications that may be filed under the alternate procedure;
- (2) permitting the hearing officer, in appropriate circumstances, to transfer a petition or an application filed under the alternate procedure to the board of zoning appeals;
- (3) requiring the creation of minutes and records of the proceedings before the hearing officer and the filing of the minutes and records as public records; and
- (4) regulating conflicts of interest and communication with the hearing officer, so as to require the same level of conduct as is required by the 900 series of this chapter.

(b) The staff (as defined by the zoning ordinance), if any, may file a written objection to a petition or an application for a variance, exception, or use if:

- (1) it would be injurious to the public health, safety, morals, and general welfare of the community; or



(2) the use or value of the area adjacent to the property included would be affected in a substantially adverse manner.

(c) If a written objection is filed under subsection (b), the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(d) The staff (as defined by the zoning ordinance), if any, may indicate that it does not object to the approval of the variance, exception, or use if specified conditions are attached. If the petitioner or applicant does not accept these conditions, the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(e) The hearing officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in section 1015 of this chapter. If the petitioner or applicant for the variance, exception, or use does not accept these conditions or make the commitment, the petition or application shall:

(1) be considered withdrawn; or

(2) be transferred to the board of zoning appeals if requested by the petitioner or applicant.

(f) The hearing officer may not modify or terminate any commitment, whether made under this section or section 1015 of this chapter. Commitments made under this section may be modified or terminated only by the board of zoning appeals.

(g) A decision of a hearing officer under the alternate procedure may not be a basis for judicial review, but it may be appealed to the board of zoning appeals. An interested person who wishes to appeal a decision of a hearing officer under the alternate procedure must file the appeal with:

(1) the board of zoning appeals if the board of zoning appeals consists of only one (1) division; or

(2) a division of the board of zoning appeals if the board of zoning appeals consists of more than one (1) division;

within five (5) days after the decision is made.

*As added by P.L.357-1983, SEC.21. Amended by P.L.320-1995, SEC.16; P.L.126-2011, SEC.32.*

#### **IC 36-7-4-1000**

##### **1000 Series—Remedies and enforcement**

Sec. 1000. This series (sections 1000 through 1099 of this chapter) may be cited as follows: 1000 SERIES—REMEDIES AND ENFORCEMENT.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-1001****Remedies and enforcement; stay of proceedings and work on premises affected pending appeal to board of zoning appeals**

Sec. 1001. (a) When an appeal from the decision of an official or board has been filed with the board of zoning appeals, proceedings and work on the premises affected shall be stayed unless the official or board certifies to the board of zoning appeals that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In that case, proceedings or work may not be stayed except by a restraining order.

(b) After notice to the officer or board and to the owner of the premises affected and after due cause is shown, the circuit or superior court of the county in which the premises affected are located may grant the restraining order.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.53.*

**IC 36-7-4-1002****Remedies and enforcement; stay order**

Sec. 1002. After the owner of, or a person in charge of the work on, the premises affected has received notice that an appeal has been filed with the board of zoning appeals, the official or board charged with the enforcement of an ordinance, under the 600 series of this chapter, may order the work stayed and call on the police power of the municipality or county to give effect to that order.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-1003****Judicial review**

Sec. 1003. (a) Each decision of the legislative body under section 918.6 of this chapter is subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under section 1016(a) of this chapter.

(b) METRO. A petition for judicial review must be filed with the court after the expiration of the period within which an official designated by the metropolitan development commission or a member of the legislative body of the city and county may file an appeal under section 922 of this chapter but not later than the period provided for timely filing under section 1605 of this chapter. However, if the official or the member of the legislative body of the city and county files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to judicial review. The official, the department of metropolitan development, or the member of the legislative body of the city and county may not seek judicial review of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.304-1989,*

*SEC.2; P.L.1-1990, SEC.360; P.L.320-1995, SEC.17; P.L.150-2003, SEC.1; P.L.126-2011, SEC.33; P.L.88-2014, SEC.4.*

**IC 36-7-4-1004**

**Repealed**

*(Repealed by Acts 1981, P.L.310, SEC.94.)*

**IC 36-7-4-1005**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.320-1995, SEC.18; P.L.150-2003, SEC.2. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1006**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.150-2003, SEC.3. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1007**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1008**

*(As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.54. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1009**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1010**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.55. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1011**

**Repealed**

*(As added by Acts 1981, P.L.309, SEC.23. Repealed by P.L.126-2011, SEC.68.)*

**IC 36-7-4-1012**

**Remedies and enforcement; violation as common nuisance**

Sec. 1012. An ordinance adopted under this chapter may provide that a structure erected, raised, or converted, or land or premises used, in violation of this chapter or an ordinance or regulation made under this chapter, is a common nuisance and that the owner or

possessor of the structure, land, or premises is liable for maintaining a common nuisance.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.56.*

### **IC 36-7-4-1013**

#### **Remedies and enforcement; prosecution; attorneys**

Sec. 1013. (a) When the legislative body provides penalties for failure to comply with any ordinance adopted under this chapter, the municipal attorney or an attorney representing the county, as the case may be, shall, on receipt of information of the violation of any ordinance, make an investigation of the alleged violation. If acts elicited by the investigation are sufficient to establish a reasonable belief that a violation has occurred on the part of the party investigated, the municipal attorney or an attorney representing the county may file a complaint against the person and prosecute the alleged violation under IC 36-1-6.

(b) The plan commission or a board of zoning appeals may request the prosecuting attorney of the county to take appropriate action in any case involving the violation of any ordinance or regulation adopted under this chapter.

(c) The plan commission may appoint one (1) or more attorneys to advise the planning staff and to assist in the enforcement of any ordinances and regulations adopted under this chapter. Subject to the 400 series of this chapter, an area plan commission may employ one (1) attorney on a full-time basis so that the attorney can become fully informed on the specialized law of planning, zoning, and subdivision control.

(d) The services of attorneys appointed by the plan commission under subsection (c) shall be made available without extra compensation to the prosecuting attorney in all cases involving ordinances or regulations adopted under this chapter. The attorneys may be deputized to act for and under the direction of the prosecuting attorney.

(e) In civil actions for the enforcement of ordinances or regulations adopted under this chapter, an attorney appointed by the plan commission may bring an action in the name of the plan commission.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.137-1989, SEC.16; P.L.126-2011, SEC.34.*

### **IC 36-7-4-1014**

#### **Remedies and enforcement; allowable actions**

Sec. 1014. (a) The plan commission, board of zoning appeals, or any enforcement official designated in the zoning ordinance may bring an action under IC 36-1-6 to enforce any ordinance adopted or action taken under this chapter.

(b) The plan commission, board of zoning appeals, or any

enforcement official designated in the zoning ordinance may also bring an action to enforce:

- (1) conditions imposed by the commission or board of zoning appeals under this chapter; or
- (2) covenants made in connection with a subdivision plat, a development plan, or a PUD district ordinance (as defined in section 1503 of this chapter).

(c) **ADVISORY.** In addition, in each county having a metropolitan plan commission, if the county or second class city adopts a zoning ordinance under this chapter, then that unit may also invoke any remedy under this section. However, the county may do so only outside the corporate boundaries of the city, and the city may do so only within its corporate boundaries.

(d) The plan commission, board of zoning appeals, or designated enforcement official may invoke any legal, equitable, or special remedy in an action described in subsection (a) or (b).

(e) An action for the levy of a fine or penalty for enforcement of a zoning ordinance may be brought in any court located within the jurisdiction of the plan commission or board of zoning appeals.

(f) If the plan commission, board of zoning appeals, or designated enforcement official is successful in an action brought under this section, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.220-1986, SEC.27; P.L.2-1989, SEC.27; P.L.261-1993, SEC.1; P.L.16-1995, SEC.13; P.L.320-1995, SEC.19; P.L.126-2011, SEC.35.*

### **IC 36-7-4-1015**

#### **Commitments; enforcement**

Sec. 1015. (a) As a condition to the:

- (1) adoption of a rezoning proposal;
- (2) primary approval of a proposed subdivision plat or development plan;
- (3) approval of a vacation of all or part of the plat; or
- (4) approval of an application for a:
  - (A) special exception;
  - (B) special use;
  - (C) contingent use;
  - (D) conditional use; or
  - (E) variance;

the owner of a parcel of real property may be required or allowed to make a commitment concerning the use or development of that parcel.

(b) Commitments are subject to the following provisions:

- (1) A commitment must be in writing.
- (2) Unless the written commitment is modified or terminated in accordance with this subsection, a written commitment is binding on the owner of the parcel.

(3) A commitment shall be recorded in the office of the county recorder. After a commitment is recorded, it is binding on a subsequent owner or any other person who acquires an interest in the parcel. However, a commitment is binding on the owner who makes the commitment even if the commitment is unrecorded. An unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.

(4) A commitment may contain terms providing for its own expiration. A commitment may also contain terms providing that the commitment automatically terminates:

(A) if the zoning district or classification applicable to the parcel is changed;

(B) if the land use to which the commitment relates is changed; or

(C) otherwise in accordance with the rules of the plan commission, board of zoning appeals, or legislative body to which the commitment is made.

(5) Except for a commitment that expires or automatically terminates under subdivision (4), or except as provided in subdivision (10), a commitment may be modified or terminated:

(A) by a decision of the plan commission or board of zoning appeals to which the commitment was made; or

(B) by the decision of the legislative body, if the commitment is made as part of a rezoning proposal being considered by the legislative body under the 600 or 1500 series of this chapter.

A decision by a plan commission or board of zoning appeals must be made at a public hearing after notice of the hearing has been provided under the rules of the plan commission or board of zoning appeals, as the case may be.

(6) During the time a rezoning proposal is being considered by the legislative body under the 600 or 1500 series of this chapter, the owner may make a new commitment to the legislative body or modify the terms of a commitment that was made when the proposal was being considered by the plan commission. This subdivision does not apply to a commitment to which subdivision (10) applies.

(7) Except as provided in subdivision (8), no further action of the plan commission is required for an action taken by the legislative body under subdivision (6) to be effective.

(8) If a commitment is modified under subdivision (6) and the effect of the modification is to make the commitment less stringent, the modified commitment shall be referred to the plan commission for further review. The plan commission shall, not later than forty-five (45) days after referral of the modified commitment:

- (A) ratify the modified commitment; or
- (B) certify a recommendation to the legislative body that the commitment be further modified.

After considering the recommendation of the plan commission, the legislative body shall then make the final decision on the terms of the modified commitment.

(9) Requiring or allowing a commitment to be made does not obligate the plan commission, board of zoning appeals, or legislative body, as applicable, to adopt, approve, or favorably recommend the proposal or application to which the commitment relates.

(10) This subdivision applies only to a commitment that is made before the parcel subject to the commitment is annexed by a municipality and after the annexation, the parcel becomes subject to the jurisdiction of a plan commission, board of zoning appeals, or legislative body other than the plan commission, board of zoning appeals, or legislative body to which the commitment was made. A commitment may be modified or terminated only by a decision of the legislative body of the annexing municipality. The decision must be made by the legislative body of the annexing municipality after considering the recommendation of the municipal plan commission certified to the legislative body after a public hearing held by the plan commission in accordance with the commission's rules. The rules of the municipal plan commission must include a provision requiring notice to be sent by certified mail at least ten (10) days before the date of the hearing to the following:

- (A) The plan commission, board of zoning appeals, or legislative body to which the commitment was made.
- (B) Each owner of real property, as shown on the county auditor's current tax list, whose real property is located within three hundred (300) feet of the parcel subject to the commitment.

(c) The plan commission or board of zoning appeals may adopt rules:

- (1) governing the creation, form, recording, effectiveness, modification, and termination of commitments that are made before the plan commission or board of zoning appeals; and
- (2) designating which specially affected persons and classes of specially affected persons are entitled to enforce commitments.

(d) An action to enforce a commitment may be brought in the circuit or superior court of the county by:

- (1) the plan commission, the board of zoning appeals, or the legislative body before which the commitment was made;
- (2) in the case of a commitment:
  - (A) modified under subsection (b)(10); or
  - (B) continued in effect upon annexation;

the legislative body of the municipality that annexed the real property subject to the commitment, if the annexation is effective after the date the commitment was made;

(3) any person who was entitled to enforce a commitment under the rules of the plan commission or board of zoning appeals in force at the time the commitment was made; or

(4) any other specially affected person who was designated in the commitment.

(e) A person bringing an action to enforce a commitment may request mandatory or prohibitory injunctive relief through the granting of a temporary restraining order, preliminary injunction, or permanent injunction. If an action to enforce a commitment is successful, the respondent shall bear the costs of the action. A change of venue from the county may not be granted in such an action.

(f) In an action to enforce a commitment, it is not a defense that:

(1) no consideration was given for the commitment;

(2) the commitment does not benefit any designated parcel of property;

(3) the document setting forth the commitment lacks a seal;

(4) there is no privity of estate;

(5) there is not privity of contract; or

(6) there is no proof of damages.

(g) The following types of conditions, as authorized by this chapter, are not considered commitments and are not subject to subsection (b):

(1) A condition imposed upon primary approval of a plat that must be met before secondary approval of the plat may be granted under the 700 series of this chapter.

(2) A condition imposed upon the approval of an exception, a use, a variance, or a development plan that must be met before an improvement location permit may be issued under the 800 series of this chapter.

(3) A condition imposed upon an approval relative to any other development requirement that must be met before any other secondary approval may be granted or building permit may be issued under this chapter.

(4) A condition that was imposed before July 1, 2011, on an approval relative to any development requirement. However, this subdivision applies only if a copy of the condition has been filed and permanently maintained as a public record in the office of the plan commission or board of zoning appeals that imposed the condition.

(h) Covenants, easements, equitable servitudes, and other land use restrictions created in accordance with law are not considered commitments and are not subject to subsection (b).

(i) This subsection applies only to a commitment made as part of a rezoning proposal being considered by the legislative body under



the 600 or 1500 series of this chapter. A written commitment may not abrogate the authority of a legislative body to modify or terminate a commitment under this section.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.320-1995, SEC.20; P.L.126-2011, SEC.36; P.L.130-2014, SEC.1.*

#### **IC 36-7-4-1016**

##### **Judicial review of zoning decisions**

Sec. 1016. (a) Final decisions of the board of zoning appeals under:

- (1) the 900 series of this chapter (administrative appeals, exceptions, uses, and variances); or
- (2) section 1015 of this chapter (appeals of commitment modifications or terminations);

are considered zoning decisions for purposes of this chapter and are subject to judicial review in accordance with the 1600 series of this chapter.

(b) The following decisions of the plan commission are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under subsection (a):

- (1) A final decision under the 700 series of this chapter (subdivision control).
- (2) A final decision under section 1015 of this chapter (appeal of a commitment modification or termination).
- (3) A final decision under the 1400 series of this chapter (development plans).
- (4) A final decision under the 1500 series of this chapter (planned unit development), when authority to make a final decision is delegated to the plan commission by the legislative body under section 1511 of this chapter.

(c) Notwithstanding subsection (b)(2), decisions of a legislative body under section 1015(b)(6) or 1015(b)(10) of this chapter are not considered zoning decisions for purposes of this chapter and are not subject to judicial review in accordance with the 1600 series of this chapter.

(d) Final decisions of preservation commissions under IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3 (certificates of appropriateness) are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under subsection (a).

(e) Final decisions of zoning administrators under IC 14-28-4-18 (improvement location permits within flood plain areas) are considered zoning decisions for purposes of this chapter and are subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under

subsection (a).

(f) The following actions are legislative acts and are not considered zoning decisions for purposes of this chapter:

- (1) Adopting or approving a comprehensive plan under the 500 series of this chapter.
- (2) Certifying with or without a recommendation a proposal under the 600 series of this chapter.
- (3) Adopting, rejecting, or amending a zoning ordinance under the 600 series of this chapter.
- (4) Adopting, rejecting, or amending an impact fee ordinance under the 1300 series of this chapter.
- (5) Designating a zoning district where a development plan is required under the 1400 series of this chapter.
- (6) Adopting, rejecting, or amending a PUD district ordinance under the 1500 series of this chapter.
- (7) Adopting, rejecting, or amending a flood plain zoning ordinance under IC 14-28-4.
- (8) Certifying a recommendation, or modifying or terminating a commitment, under section 1015(b)(6) or 1015(b)(10) of this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.57; P.L.320-1995, SEC.21; P.L.126-2011, SEC.37; P.L.130-2014, SEC.2.*

#### **IC 36-7-4-1017**

##### **Remedies and enforcement; status of structures erected in violation**

Sec. 1017. In an action or proceeding by the municipality or county for the taking, appropriation, or condemnation of land, or in an action against the municipality or county, no compensation or damages may be awarded for the taking of or injury to any structure erected in violation of:

- (1) an ordinance adopted under this chapter; or
- (2) any prior ordinance superseded by an ordinance adopted under this chapter.

This section applies only if the structure remains in violation at the time of the taking, appropriation, or condemnation.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.58.*

#### **IC 36-7-4-1018**

##### **Violations; penalties; ordinances**

Sec. 1018. Ordinances adopted under this chapter may provide for penalties for violations, subject to IC 36-1-3-8.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.59.*

#### **IC 36-7-4-1019**

##### **Remedies and enforcement; nonconforming use or variance;**

**burden of proof**

Sec. 1019. In an enforcement action brought under this chapter, the party alleging the existence of a nonconforming use or variance granted by a board of zoning appeals has the burden of proof on that issue. The nonexistence of a nonconforming use or variance need not be proved.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.60.*

**IC 36-7-4-1020****Ordinances; presumption of validity; official notice**

Sec. 1020. (a) All ordinances adopted under this chapter are presumed to have been validly adopted.

(b) A plan commission or a board of zoning appeals shall take official notice of all ordinances adopted under this chapter.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.310, SEC.61; P.L.220-1986, SEC.28; P.L.126-2011, SEC.38.*

**IC 36-7-4-1100****1100 Series—Miscellaneous provisions**

Sec. 1100. This series (sections 1100 through 1199 of this chapter) may be cited as follows: 1100 SERIES—MISCELLANEOUS PROVISIONS.

*As added by Acts 1981, P.L.309, SEC.23.*

**IC 36-7-4-1101****Miscellaneous provisions; application**

Sec. 1101. AREA. The area planning law does not apply in a county where countywide planning and zoning is required by statute.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.12-1992, SEC.165; P.L.10-2015, SEC.2.*

**IC 36-7-4-1102****Miscellaneous provisions; supplemental nature of planning law**

Sec. 1102. This chapter is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other statutes and these powers remain in effect. Powers of supervision and regulation by these entities of state government over political subdivisions or persons also are not abrogated and continue in effect.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.126-2011, SEC.39.*

**IC 36-7-4-1103****Miscellaneous provisions; use and alienation of mineral resources and forests outside urban areas**

Sec. 1103. (a) This section does not apply to a plan commission exercising jurisdiction in a county having a population of more than

twenty thousand nine hundred (20,900) but less than twenty-one thousand (21,000).

(b) **ADVISORY—AREA.** For purposes of this section, urban areas include all lands and lots within the corporate boundaries of a municipality, any other lands or lots used for residential purposes where there are at least eight (8) residences within any quarter mile square area, and other lands or lots that have been or are planned for residential areas contiguous to the municipality.

(c) **ADVISORY—AREA.** This chapter does not authorize an ordinance or action of a plan commission that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forests by the owner or alienee of them.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.117-1986, SEC.3; P.L.346-1987, SEC.1; P.L.305-1989, SEC.1; P.L.12-1992, SEC.166; P.L.216-1999, SEC.5; P.L.170-2002, SEC.153; P.L.119-2012, SEC.195.*

#### **IC 36-7-4-1104**

##### **Miscellaneous provisions; no effect on eminent domain by state, state agency, or Indiana finance authority**

Sec. 1104. (a) As used in this section, "state agency" means all agencies, boards, commissions, departments, and institutions, including state educational institutions, of the state.

(b) **ADVISORY—AREA.** This chapter does not restrict or regulate (or authorize any political subdivision, legislative body, plan commission, or board of zoning appeals to restrict or regulate) the exercise of the power of eminent domain by the state, by any state agency, or by the Indiana finance authority (IC 4-4-11-4), or the use of property owned or occupied by the state, by any state agency, or by the Indiana finance authority.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.181-2016, SEC.41.*

#### **IC 36-7-4-1105**

##### **Miscellaneous provisions; setting aside memorials or monuments**

Sec. 1105. **ADVISORY.** The advisory planning law does not restrict or prohibit the state of any of its political subdivisions from setting aside, by law, sites, memorials, edifices, and monuments in commemoration of persons or objects of historical or architectural interest or value as a part of our citizens' heritage.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1106**

##### **Miscellaneous provisions; comprehensive plans and ordinances; standards and requirements; manufactured homes**

Sec. 1106. (a) As used in this section:

- (1) "Manufactured home" means a dwelling unit, designed and built in a factory, which bears a seal certifying that it was built

in compliance with the federal Manufactured Housing Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et seq.).

(2) "Underfloor space" means that space between the bottom of the floor joists and the earth.

(3) "Occupied space" means the total area of earth horizontally covered by the structure, excluding accessory structures such as, but not limited to, garages, patios and porches.

(b) Comprehensive plans and ordinances adopted under the provisions of this chapter may subject dwelling units and lots to identical standards and requirements, whether or not the dwelling unit to be placed on a lot is a manufactured home or some other type of dwelling unit. These standards and requirements may include, but are not limited to:

- (1) setback distance;
- (2) side and rear yard area;
- (3) vehicle parking space;
- (4) minimum square footage of the dwelling unit; and
- (5) underfloor space enclosure requirements.

However, aesthetic standards and requirements pertaining to the home structure itself which are adopted under this section may only pertain to roofing and siding materials.

(c) METRO. Standards and requirements, specified in comprehensive plans and ordinances, adopted under this section for lots and dwelling units may not totally preclude all manufactured homes constructed after January 1, 1981, and that exceed twenty-three (23) feet in width and nine hundred fifty (950) square feet of occupied space, from being installed as permanent residences on any lot on which any other type of dwelling unit may be placed.

(d) ADVISORY—AREA. Standards and requirements, specified in comprehensive plans and ordinances, adopted under this section for lots and dwelling units may not totally preclude all manufactured homes constructed after January 1, 1981, and that exceed nine hundred fifty (950) square feet of occupied space, from being installed as permanent residences on any lot on which any other type of dwelling unit may be placed.

*As added by Acts 1981, P.L.312, SEC.1. Amended by Acts 1982, P.L.33, SEC.32.*

### **IC 36-7-4-1107**

#### **Children's home**

Sec. 1107. (a) This section applies to a children's home providing residential care for eleven (11) or more children that is operating in a residential area on January 1, 1992.

(b) As used in this section, "children's home" has the meaning set forth in IC 12-7-2-29(1).

(c) A zoning ordinance may not prevent improvements to a children's home on the grounds that:

(1) the children's home is a business; or  
(2) the persons residing in the children's home are not related.  
(d) Except as provided in subsection (c), a children's home must meet the same:

- (1) zoning requirements;
- (2) developmental standards; and
- (3) building codes;

that apply to the improvement of residential structures in the same residential district or classification as the children's home.

(e) As used in this subsection, "tract" has the meaning set forth in IC 6-1.1-1-22.5. A children's home must comply with a restriction, reservation, condition, exception, or covenant in a subdivision plat, deed, or other instrument of, or pertaining to, the transfer, sale, lease, or use of property that:

- (1) applies to the tract on which the children's home is located; and
- (2) is in existence for that tract before the children's home acquires ownership or use of the tract.

*As added by P.L.142-1992, SEC.1. Amended by P.L.1-1993, SEC.242; P.L.2-1995, SEC.131.*

#### **IC 36-7-4-1108**

##### **Child care home used as primary residence of care home operator; zoning restrictions**

Sec. 1108. (a) This section applies only to a child care home that is used as the primary residence of the person who operates the child care home.

(b) As used in this section, "child care home" has the meaning set forth in IC 12-7-2-28.6.

(c) Except as provided in subsection (e), a zoning ordinance may not do any of the following:

- (1) Exclude a child care home from a residential area solely because the child care home is a business.
- (2) Impose limits on the number of children that may be served by a child care home at any one (1) time that vary from the limits set forth in IC 12-7-2-33.7 and IC 12-7-2-33.8.
- (3) Impose requirements or restrictions upon child care homes that vary from the requirements and restrictions imposed upon child care homes by rules adopted by the division of family resources or the fire prevention and building safety commission.

(d) Notwithstanding subsection (c), a child care home may be required to meet the same:

- (1) zoning requirements;
- (2) developmental standards; and
- (3) building codes;

that apply to other residential structures in the same residential district or classification as the child care home.

(e) A zoning ordinance:

(1) that is in effect on July 1, 1993; and

(2) that:

(A) excludes a child care home from a residential area solely because the child care home is a business;

(B) imposes limits on the number of children that may be served by a child care home at any one (1) time that vary from the limits set forth in IC 12-7-2-33.7 and IC 12-7-2-33.8; or

(C) imposes requirements or restrictions upon child care homes that vary from the requirements and restrictions imposed upon child care homes by rules adopted by the division of family resources or the fire prevention and building safety commission;

is not subject to subsection (c) until July 1, 1994.

*As added by P.L.136-1993, SEC.23. Amended by P.L.145-2006, SEC.374.*

### **IC 36-7-4-1109**

#### **Approval of permit, plat, plan, use, or exception; applicability of local or state law while approval pending**

Sec. 1109. (a) As used in this section, "local governmental agency" includes any agency, officer, board, or commission of a local unit of government that may issue:

(1) a permit; or

(2) an approval of a land use or an approval for the construction of a development, a building, or another structure.

(b) As used in this section, "permit" means any of the following:

(1) An improvement location permit.

(2) A building permit.

(3) A certificate of occupancy.

(4) Approval of a site-specific development plan.

(5) Approval of a primary or secondary plat.

(6) Approval of a contingent use, conditional use, special exception or special use.

(7) Approval of a planned unit development.

(c) Subject to section 1110 of this chapter, if a person files a complete application as required by the effective ordinances or rules of a local governmental agency for a permit with the appropriate local governmental agency, the granting of the permit, and the granting of any secondary, additional, or related permits or approvals required from the same local governmental agency with respect to the general subject matter of the application for the first permit, are governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the property when the application is filed, even if before the issuance of the permit or while the permit approval process is pending, or before the issuance of any secondary, additional, or related permits or approvals or while the

secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the applicable local legislative body or regulatory body. However, this subsection does not apply if the development or other activity to which the permit relates is not completed within ten (10) years after the development or activity is commenced.

(d) Subsection (e) applies if:

(1) either:

(A) a local governmental agency issues to a person a permit or grants a person approval for the construction of a development, a building, or another structure; or

(B) a permit or approval is not required from the local governmental agency for the construction of the development, building, or structure;

(2) before beginning the construction of the development, building, or structure, the person must obtain a permit or approval for the construction of the development, building, or structure from a state governmental agency; and

(3) the person has applied for the permit or requested the approval for the construction of the development, building, or structure from the state governmental agency within ninety (90) days of issuance of the permit by the local governmental agency.

(e) Subject to subsection (f) and section 1110 of this chapter, if the conditions of subsection (d) are satisfied:

(1) a permit or approval issued or granted to a person by the local governmental agency for the construction of the development, building, or structure; or

(2) the person's right to construct the development, building, or structure without a permit or approval from the local governmental agency;

is governed for at least three (3) years after the person applies for the permit by the statutes, ordinances, rules, development standards, regulations, and approvals in effect and applicable to the property when the person applies for the permit or requests approval from the state governmental agency for the construction of the development, building, or structure, even if before the commencement of the construction or while the permit application or approval request is pending with the state governmental agency the statutes governing the granting of the permit or approval from the local governmental agency are changed by the general assembly or the ordinances, rules, development standards, or regulations of the local governmental agency are changed by the applicable local legislative body or regulatory body. However, this subsection does not apply if the development or other activity to which the permit or approval request relates is not completed within ten (10) years after the development



or activity is commenced.

(f) Subsection (d) does not apply to property when it is demonstrated by the local or state governmental agency that the construction of the development, building, or structure would cause imminent peril to life or property.

(g) This section does not apply to building codes under IC 22-13.  
*As added by P.L.49-2006, SEC.1. Amended by P.L.126-2011, SEC.40.*

#### **IC 36-7-4-1110**

##### **Expired**

*(Expired 12-31-2014 by P.L.126-2011, SEC.41.)*

#### **IC 36-7-4-1111**

##### **Computation of time**

Sec. 1111. In computing any period of time under this chapter, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:

- (1) a Saturday;
- (2) a Sunday;
- (3) a legal holiday under an Indiana statute; or
- (4) a day that the office in which the act is to be done is closed during regular business hours.

A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, legal holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

*As added by P.L.126-2011, SEC.42.*

#### **IC 36-7-4-1200**

##### **1200 Series—Township joinder**

Sec. 1200. This series (sections 1200 through 1299 of this chapter) may be cited as follows: 1200 SERIES—TOWNSHIP JOINDER.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1201**

##### **Township joinder; conditions**

Sec. 1201. ADVISORY. A township may join a municipality that has an advisory plan commission and has adopted zoning and subdivision control ordinances, if any part of the township is contiguous to:

- (1) a corporate boundary of the municipality;
- (2) an area over which the municipality is exercising planning and zoning authority; or
- (3) a township that has joined the municipality under the 1200

series of this chapter.

Although no part of the township is contiguous to the municipality, a township may join a municipality that has an advisory plan commission and has adopted zoning and subdivision control ordinances, if the municipality is the county seat of the county in which the township is located.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1202**

##### **Township joinder; additional conditions**

Sec. 1202. (a) ADVISORY. In a county that has a county plan commission or a metropolitan plan commission, after the county has adopted:

- (1) a zoning ordinance that establishes reasonable districts for:
  - (A) agricultural, residential, commercial, and industrial land uses;
  - (B) adequate setback lines; and
  - (C) area, bulk, and height restrictions; and
- (2) a subdivision control ordinance that imposes restrictions at least equal to those established in the zoning ordinance;

a township may not join with a municipality for planning and zoning purposes. This subsection does not affect a joinder agreement implemented before the county adopts ordinances of the character set forth in this subsection. Such a joinder agreement continues in effect until the township withdraws from the joinder under section 1212 of this chapter.

(b) ADVISORY. If a county has not established a county plan commission or a metropolitan plan commission or adopted ordinances of the character set forth in subsection (a), a township may join with a municipality for planning and zoning purposes.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.306-1989, SEC.1.*

#### **IC 36-7-4-1203**

##### **Township joinder; filing of petition; hearing; notice; remonstrance**

Sec. 1203. (a) ADVISORY. If a township wants to join a municipality for planning and zoning purposes, a petition, signed by fifty (50) freeholders, must be filed with the township executive. The township executive and the township legislative body shall hold a hearing within thirty (30) days after the date of the filing of the petition. Public notice, giving the place, date, and time of the hearing, shall be given in accordance with IC 5-3-1.

(b) ADVISORY. If a remonstrance duly signed by a majority of the freeholders of the township residing outside the corporate boundaries of any municipality is filed on or before the date of the hearing, no action may be taken on the petition. If no such remonstrance is filed, the township executive and legislative body shall send the petition requesting joinder immediately to the

municipal plan commission. If a petition for joinder is rejected under remonstrance as provided in this section, it may be refiled not earlier than one (1) year after that remonstrance.

*As added by Acts 1981, P.L.309, SEC.23. Amended by Acts 1981, P.L.45, SEC.23.*

#### **IC 36-7-4-1204**

##### **Township joinder; consideration of petition**

Sec. 1204. ADVISORY. Upon the receipt of a petition for joinder from a township, the municipal plan commission shall consider the petition. If the commission is favorable to it, it shall recommend joinder to the municipal legislative body. If the legislative body is favorable, it shall pass a resolution setting forth the terms of the joinder, send one (1) copy to the township executive, and file one (1) copy with the county recorder, which copy shall be filed in the miscellaneous records. If the commission or the legislative body rejects the petition, it shall immediately notify the township executive.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1205**

##### **Township joinder; choice of municipality for joinder**

Sec. 1205. ADVISORY. If a township is contiguous to two (2) or more municipalities, the township may elect the municipality with which it wants to join.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1206**

##### **Township joinder; limitations on choice of municipality**

Sec. 1206. (a) ADVISORY. If a township is partially within the corporate boundaries of a municipality or is partially within the jurisdictional limits of a municipality, as specified in section 205 of the advisory planning law, it may seek joinder only with that municipality.

(b) ADVISORY. If a township is within the jurisdictional limits of two (2) municipalities and one (1) of those municipalities is exercising control within the jurisdictional limit, the township must first seek joinder with that municipality. If both municipalities are exercising jurisdiction, then the township may choose the municipality with which it wants to join.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1207**

##### **Township joinder; joinder with county or municipality in other county**

Sec. 1207. ADVISORY. If a township located in another county is contiguous to:

- (1) a municipal or county boundary;

(2) an area over which a municipality is exercising planning and zoning authority; or

(3) a township that has joined a municipality or county under the 1200 series of this chapter;

and joinder is not precluded by section 1202 of this chapter, then it may join either a contiguous municipality or a contiguous county that:

(A) has an advisory plan commission; and

(B) has adopted ordinances of the type specified in section 1202 of this chapter.

The procedures for joinder are the same as specified by sections 1203 and 1204 of this chapter, except that if joinder is with a county, the petition must go to the county plan commission or the metropolitan plan commission and the resolution of approval must be adopted by the county legislative body.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1208**

##### **Township joinder; planning and zoning jurisdiction**

Sec. 1208. ADVISORY. If the petition is accepted, the planning and zoning jurisdiction of the municipality, or of the county under section 1207 of this chapter, extends to the township with the same effect as if the township was a part of the municipality or the county, as the case may be.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1209**

##### **Township joinder; planning and zoning cost**

Sec. 1209. ADVISORY. As a condition to the acceptance of the petition, the legislative body of a municipality or county may stipulate that the township contract with it for the payment of an equitable amount of the cost of planning and zoning within the township. If the municipality or county believes that it is to its advantage, it may agree to provide planning and zoning services without cost to the township.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1210**

##### **Township joinder; membership of township on advisory plan commission**

Sec. 1210. (a) ADVISORY. To implement the joinder agreement, the township executive, with the approval of the township legislative body, shall appoint additional members to the advisory plan commission. The number of additional appointments must be such that, when added to the membership of the plan commission before joinder, the total membership of the plan commission reflects the proportion that the population of the township bears to that of the municipality or county, as the case may be. However, this

proportional representation must not cause a reduction in the number of members representing that municipality or county.

(b) ADVISORY. Each additional member shall serve for a term of two (2) years from the date of the appointment. Members may be reappointed to subsequent terms. The members have all the rights and privileges of a member of the advisory plan commission, including the right to vote.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1210.5**

#### **Township joinder; membership of certain townships on advisory plan commission in certain counties**

Sec. 1210.5. (a) ADVISORY. As used in this section, "municipality" refers to the most populous municipality in the jurisdiction of the plan commission.

(b) ADVISORY. This section applies to a plan commission operating under a joinder agreement in a county:

(1) having a population of more than two hundred seventy thousand (270,000) but less than three hundred thousand (300,000); and

(2) containing:

(A) a township having a population of more than thirty-two thousand (32,000) but less than fifty thousand (50,000); or

(B) a township having a population of more than nine thousand (9,000) but less than fifteen thousand (15,000).

(c) ADVISORY. Notwithstanding section 1210 of this chapter, a plan commission described in subsection (b) shall have nine (9) members as follows:

(1) Four (4) members who are residents of the municipality, to be appointed for four (4) year terms by the executive of the municipality.

(2) Three (3) members who are residents of the municipality, to be appointed for four (4) year terms by the legislative body of the municipality.

(3) Two (2) members who are residents of the township, to be appointed for four (4) year terms by the township executive with the approval of the township legislative body.

(d) The joinder agreement expires if the municipality annexes the entire area of a township described in subsection (b)(2).

(e) A joinder agreement under this section may be terminated if:

(1) the municipality adopts an ordinance terminating the joinder agreement;

(2) before adopting the ordinance under subdivision (1), the municipality conducts a public hearing on the issue of terminating the joinder agreement; and

(3) the executive of the municipality provides written notice to the township executive of the township subject to the joinder agreement that states the reason for the municipality's

termination of the joinder agreement.

*As added by P.L.322-1995, SEC.1. Amended by P.L.226-1997, SEC.4; P.L.170-2002, SEC.154; P.L.39-2007, SEC.1; P.L.119-2012, SEC.196.*

#### **IC 36-7-4-1210.6**

##### **Plan commission created by joinder agreement; vacancies**

Sec. 1210.6. (a) ADVISORY. This section applies to an advisory plan commission that is:

- (1) created through a joinder agreement; and
- (2) composed of nine (9) members, some of whom are appointed from a legislative branch of local government.

(b) Notwithstanding any other provision, if:

- (1) there is a vacancy in the membership of a plan commission that is required by statute to be filled by a member of a legislative body of local government; and
- (2) no member of the legislative body of local government will accept an appointment to fill the vacancy;

the appointing authority may appoint a person from the community who is not an elected official to serve on the advisory plan commission for a term of one (1) year.

(c) The person appointed under subsection (b) may be reappointed to successive terms.

*As added by P.L.150-2003, SEC.4.*

#### **IC 36-7-4-1211**

##### **Township joinder; collection of fees**

Sec. 1211. ADVISORY. Fees collected for the issuance of permits or for the approval of subdivision plats shall be paid to the municipality or county, that the township joins, at the same rate and in the same manner as if the township was a part of that municipality or county.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1212**

##### **Township joinder; withdrawal of township; conditions; procedure**

Sec. 1212. ADVISORY. Because long range planning studies of population, land use, schools, recreation, and public ways involve substantial expenditures, a township that joins with a municipality or county may not withdraw from the joinder, unless:

- (1) the municipality or county has consolidated on an area basis its planning and zoning activity under other law; or
- (2) a petition, requesting a referendum on the question "Shall the township withdraw from joinder with (the municipality), or (the county), for planning and zoning purposes?", is sent to the township executive and is signed by at least the number of the voters of the township required under IC 3-8-6-3 to place a candidate on the ballot.

If the petition is received, the township executive shall certify the petition to the county election board under IC 3-10-9-3. The board shall place the question on a ballot to be submitted at the next general election for the township in the form prescribed by IC 3-10-9-4. If the township repays the amount expended for planning and zoning purposes that exceeds the amount contributed by the township and a majority of the voters voting in the election vote in the affirmative, the township may withdraw from its joinder with the municipality or county.

*As added by Acts 1981, P.L.309, SEC.23. Amended by P.L.3-1987, SEC.566; P.L.12-1995, SEC.131.*

#### **IC 36-7-4-1213**

##### **Township joinder; authorization**

Sec. 1213. ADVISORY. This series authorizes each municipality and county to effect joinder with a contiguous township.

*As added by Acts 1981, P.L.309, SEC.23.*

#### **IC 36-7-4-1300**

##### **1300 Series—Impact Fees**

Sec. 1300. This series (sections 1300 through 1399 of this chapter) may be cited as follows: 1300 SERIES — IMPACT FEES.

*As added by P.L.221-1991, SEC.1.*

#### **IC 36-7-4-1301**

##### **"Community level of service" defined**

Sec. 1301. As used in this series, "community level of service" means a quantitative measure of the service provided by the infrastructure that is determined by a unit to be appropriate.

*As added by P.L.221-1991, SEC.2.*

#### **IC 36-7-4-1302**

##### **"Current level of service" defined**

Sec. 1302. As used in this series, "current level of service" means a quantitative measure of service provided by existing infrastructure to support existing development.

*As added by P.L.221-1991, SEC.3.*

#### **IC 36-7-4-1303**

##### **"Development" defined**

Sec. 1303. As used in this series, "development" means an improvement of any kind on land.

*As added by P.L.221-1991, SEC.4.*

#### **IC 36-7-4-1304**

##### **"Fee payer" and "person" defined**

Sec. 1304. (a) As used in this series, "fee payer" means the following:

- (1) A person who has paid an impact fee.
- (2) A person to whom a person who paid an impact fee has made a written assignment of rights concerning the impact fee.
- (3) A person who has assumed by operation of law the rights concerning an impact fee.

(b) As used in this series, "person" means an individual, a sole proprietorship, a partnership, an association, a corporation, a fiduciary, or any other entity.

*As added by P.L.221-1991, SEC.5.*

#### **IC 36-7-4-1305**

##### **"Impact fee" and "capital costs" defined**

Sec. 1305. (a) As used in this series, "impact fee" means a monetary charge imposed on new development by a unit to defray or mitigate the capital costs of infrastructure that is required by, necessitated by, or needed to serve the new development.

(b) As used in this section, "capital costs" means the costs incurred to provide additional infrastructure to serve new development, including the following:

- (1) Directly related costs of construction or expansion of infrastructure that is necessary to serve the new development, including reasonable design, survey, engineering, environmental, and other professional fees that are directly related to the construction or expansion.
- (2) Directly related land acquisition costs, including costs incurred for the following:
  - (A) Purchases of interests in land.
  - (B) Court awards or settlements.
  - (C) Reasonable appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land acquisition.
- (3) Directly related debt service, subject to section 1330 of this chapter.
- (4) Directly related expenses incurred in preparing or updating the comprehensive plan or zone improvement plan, including all administrative, consulting, attorney, and other professional fees, as limited by section 1330 of this chapter.

*As added by P.L.221-1991, SEC.6.*

#### **IC 36-7-4-1306**

##### **"Impact fee ordinance" defined**

Sec. 1306. As used in this series, "impact fee ordinance" means an ordinance adopted under section 1311 of this chapter.

*As added by P.L.221-1991, SEC.7.*

#### **IC 36-7-4-1307**

##### **"Impact zone" defined**



Sec. 1307. As used in this series, "impact zone" means a geographic area designated under section 1315 of this chapter.

*As added by P.L.221-1991, SEC.8.*

#### **IC 36-7-4-1308**

##### **"Infrastructure" defined**

Sec. 1308. As used in this series, "infrastructure" means the capital improvements that:

- (1) comprise:
  - (A) a sanitary sewer system or wastewater treatment facility;
  - (B) a park or recreational facility;
  - (C) a road or bridge;
  - (D) a drainage or flood control facility; or
  - (E) a water treatment, water storage, or water distribution facility;
- (2) are:
  - (A) owned solely for a public purpose by:
    - (i) a unit; or
    - (ii) a corporation created by a unit; or
  - (B) leased by a unit solely for a public purpose; and
- (3) are included in the zone improvement plan of the impact zone in which the capital improvements are located.

The term includes site improvements or interests in real property needed for a facility listed in subdivision (1).

*As added by P.L.221-1991, SEC.9.*

#### **IC 36-7-4-1309**

##### **"Infrastructure type" defined**

Sec. 1309. As used in this series, "infrastructure type" means any of the following types of infrastructure covered by an impact fee ordinance:

- (1) Sewer, which includes sanitary sewerage and wastewater treatment facilities.
- (2) Recreation, which includes parks and other recreational facilities.
- (3) Road, which includes public ways and bridges.
- (4) Drainage, which includes drains and flood control facilities.
- (5) Water, which includes water treatment, water storage, and water distribution facilities.

*As added by P.L.221-1991, SEC.10.*

#### **IC 36-7-4-1310**

##### **"Infrastructure agency" defined**

Sec. 1310. As used in this series, "infrastructure agency" means a political subdivision or an agency of a political subdivision responsible for acquiring, constructing, or providing a particular infrastructure type.

*As added by P.L.221-1991, SEC.11.*

**IC 36-7-4-1311****Ordinance; jurisdiction to adopt; impact fees and other charges**

Sec. 1311. (a) The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit exercises planning and zoning jurisdiction. The ordinance must aggregate the portions of the impact fee attributable to the infrastructure types covered by the ordinance so that a single and unified impact fee is imposed on each new development.

(b) If the legislative body of a unit has planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance, an ordinance adopted under this section shall be adopted in the same manner that zoning ordinances are adopted under the 600 SERIES of this chapter.

(c) If the legislative body of a unit does not have planning and zoning jurisdiction over the entire geographic area covered by the impact fee ordinance but does have jurisdiction over one (1) or more infrastructure types in the area, the legislative body shall establish the portion of the impact fee schedule or formula for the infrastructure types over which the legislative body has jurisdiction. The legislative body of the unit having planning and zoning jurisdiction shall adopt an impact fee ordinance containing that portion of the impact fee schedule or formula if:

- (1) a public hearing has been held before the legislative body having planning and zoning jurisdiction; and
- (2) each plan commission that has planning jurisdiction over any part of the geographic area in which the impact fee is to be imposed has approved the proposed impact fee ordinance by resolution.

(d) An ordinance adopted under this section is the exclusive means for a unit to impose an impact fee. An impact fee imposed on new development to pay for infrastructure may not be collected after January 1, 1992, unless the impact fee is imposed under an impact fee ordinance adopted under this chapter.

(e) Notwithstanding any other provision of this chapter, the following charges are not impact fees and may continue to be imposed by units:

- (1) Fees, charges, or assessments imposed for infrastructure services under statutes in existence on January 1, 1991, if:
  - (A) the fee, charge, or assessment is imposed upon all users whether they are new users or users requiring additional capacity or services;
  - (B) the fee, charge, or assessment is not used to fund construction of new infrastructure unless the new infrastructure is of the same type for which the fee, charge, or assessment is imposed and will serve the payer; and
  - (C) the fee, charge, or assessment constitutes a reasonable charge for the services provided in accordance with

IC 36-1-3-8(a)(6) or other governing statutes requiring that any fees, charges, or assessments bear a reasonable relationship to the infrastructure provided.

(2) Fees, charges, and assessments agreed upon under a contractual agreement entered into before April 1, 1991, or fees, charges, and assessments agreed upon under a contractual agreement, if the fees, charges, and assessments are treated as impact deductions under section 1321(d) of this chapter if an impact fee ordinance is in effect.

*As added by P.L.221-1991, SEC.12. Amended by P.L.149-2016, SEC.97.*

#### **IC 36-7-4-1312**

##### **Ordinance; prerequisites to adoption**

Sec. 1312. (a) A unit may not adopt an impact fee ordinance under section 1311 of this series unless the unit has adopted a comprehensive plan under the 500 SERIES of this chapter for the geographic area over which the unit exercises planning and zoning jurisdiction.

(b) Before the adoption of an impact fee ordinance under section 1311 of this chapter, a unit shall establish an impact fee advisory committee. The advisory committee shall:

- (1) be appointed by the executive of the unit;
- (2) be composed of not less than five (5) and not more than ten (10) members with at least forty percent (40%) of the membership representing the development, building, or real estate industries; and
- (3) serve in an advisory capacity to assist and advise the unit with regard to the adoption of an impact fee ordinance under section 1311 of this chapter.

(c) A planning commission or other committee in existence before the adoption of an impact fee ordinance that meets the membership requirements of subsection (b) may serve as the advisory committee that subsection (b) requires.

(d) Action of an advisory committee established under subsection (b) is not required as a prerequisite for the unit in adopting an impact fee ordinance under section 1311 of this chapter.

*As added by P.L.221-1991, SEC.13.*

#### **IC 36-7-4-1313**

##### **Other permissible fees and charges of adopting unit**

Sec. 1313. This series does not prohibit a unit from doing any of the following:

- (1) Imposing a charge to pay the administrative, plan review, or inspection costs associated with a permit for development.
- (2) Imposing, pursuant to a written commitment or agreement and as a condition or requirement attached to a development approval or authorization (including permitting or zoning

decisions), an obligation to dedicate, construct, or contribute goods, services, land or interests in land, or infrastructure to a unit or to an infrastructure agency. However, if the unit adopts or has already adopted an impact fee ordinance under section 1311 of this chapter the following apply:

(A) The person dedicating, contributing, or providing an improvement under this subsection is entitled to a credit for the improvement under section 1335 of this chapter.

(B) The cost of complying with the condition or requirement imposed by the unit under this subdivision may not exceed the impact fee that could have been imposed by the unit under section 1321 of this chapter for the same infrastructure.

(3) Imposing new permit fees, charges, or assessments or amending existing permit fees, charges, or assessments. However, the permit fees, charges, or assessments must meet the requirements of section 1311(e)(1)(A), 1311(e)(1)(B), and 1311(e)(1)(C) of this chapter.

*As added by P.L.221-1991, SEC.14.*

#### **IC 36-7-4-1314**

##### **Ordinance; application**

Sec. 1314. (a) Except as provided in subsections (b) and (c), an impact fee ordinance must apply to any development:

(1) that is in an impact zone; and

(2) for which a unit may require a structural building permit.

(b) An impact fee ordinance may not apply to an improvement that does not create a need for additional infrastructure, including the erection of a sign, the construction of a fence, or the interior renovation of a building not resulting in a change in use.

(c) As used in this section, "qualified property" has the meaning set forth in IC 36-1-8-18. Except as provided in subsection (d), an impact fee ordinance may not apply to qualified property, and an impact fee may not be imposed on qualified property.

(d) Upon the request of the owner of qualified property, an impact fee may be imposed on the qualified property.

*As added by P.L.221-1991, SEC.15. Amended by P.L.200-2016, SEC.2.*

#### **IC 36-7-4-1315**

##### **Ordinance; establishment of impact zones**

Sec. 1315. (a) An impact fee ordinance must establish an impact zone, or a set of impact zones, for each infrastructure type covered by the ordinance. An impact zone established for a particular infrastructure type is not required to be congruent with an impact zone established for a different infrastructure type.

(b) An impact zone may not extend beyond the jurisdictional boundary of an infrastructure agency responsible for the

infrastructure type for which the impact zone was established, unless an agreement under IC 36-1-7 is entered into by the infrastructure agencies.

(c) If an impact zone, or a set of impact zones, includes a geographic area containing territory from more than one (1) planning and zoning jurisdiction, the applicable legislative bodies and infrastructure agencies shall enter into an agreement under IC 36-1-7 concerning the collection, division, and distribution of the fees collected under the impact fee ordinance.

*As added by P.L.221-1991, SEC.16.*

#### **IC 36-7-4-1316**

##### **Impact zones; geographical area**

Sec. 1316. A unit must include in an impact zone designated under section 1315 of this chapter the geographical area necessary to ensure that:

- (1) there is a functional relationship between the components of the infrastructure type in the impact zone;
- (2) the infrastructure type provides a reasonably uniform benefit throughout the impact zone; and
- (3) all areas included in the impact zone are contiguous.

*As added by P.L.221-1991, SEC.17.*

#### **IC 36-7-4-1317**

##### **Ordinance; identification of responsible infrastructure agency**

Sec. 1317. A unit must identify in the unit's impact fee ordinance the infrastructure agency that is responsible for acquiring, constructing, or providing each infrastructure type included in the impact fee ordinance.

*As added by P.L.221-1991, SEC.18.*

#### **IC 36-7-4-1318 Version a**

##### **Ordinance; zone improvement plan preparation; contents of plan**

*Note: This version of section effective until 1-1-2017. See also following version of this section, effective 1-1-2017.*

Sec. 1318. (a) A unit may not adopt an impact fee ordinance under section 1311 of this chapter unless the unit has prepared or substantially updated a zone improvement plan for each impact zone during the immediately preceding one (1) year period. A single zone improvement plan may be used for two (2) or more infrastructure types if the impact zones for the infrastructure types are congruent.

(b) Each zone improvement plan must contain the following information:

- (1) A description of the nature and location of existing infrastructure in the impact zone.
- (2) A determination of the current level of service.
- (3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's

community level of service in the zone improvement plan.

(4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.

(5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The plan must indicate the proposed timing and sequencing of infrastructure installation.

(6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(c) If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

(1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;

(2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and

(3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:

(A) Adopting or increasing the following:

(i) The county adjusted gross income tax.

(ii) The county option income tax.

(iii) The county economic development income tax.

(iv) The annual license excise surtax.

(v) The wheel tax.

(B) Imposing the property tax rate per one hundred dollars (\$100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.

(C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.

(D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly authorized taxes.

(d) A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections (b)(1), (b)(2), (b)(5), and (c)(2).

(e) A zone improvement plan and amendments and modifications

to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section 503(5) of this chapter. If the unit establishing the impact fee schedule or formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.

(f) If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

- (1) before the effective date of the impact fee ordinance the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and
- (2) after the effective date of the impact fee ordinance the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

*As added by P.L.221-1991, SEC.19.*

#### **IC 36-7-4-1318 Version b**

##### **Ordinance; zone improvement plan preparation; contents of plan**

*Note: This version of section effective 1-1-2017. See also preceding version of this section, effective until 1-1-2017.*

Sec. 1318. (a) A unit may not adopt an impact fee ordinance under section 1311 of this chapter unless the unit has prepared or substantially updated a zone improvement plan for each impact zone during the immediately preceding one (1) year period. A single zone improvement plan may be used for two (2) or more infrastructure types if the impact zones for the infrastructure types are congruent.

(b) Each zone improvement plan must contain the following information:

- (1) A description of the nature and location of existing infrastructure in the impact zone.
- (2) A determination of the current level of service.
- (3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's community level of service in the zone improvement plan.
- (4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.
- (5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The

plan must indicate the proposed timing and sequencing of infrastructure installation.

(6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(c) If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

(1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;

(2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and

(3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:

(A) Adopting or increasing the following:

(i) The local income tax (IC 6-3.6-6).

(ii) The annual license excise surtax.

(iii) The wheel tax.

(B) Imposing the property tax rate per one hundred dollars (\$100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.

(C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.

(D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly authorized taxes.

(d) A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections (b)(1), (b)(2), (b)(5), and (c)(2).

(e) A zone improvement plan and amendments and modifications to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section 503(5) of this chapter. If the unit establishing the impact fee schedule or formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.



(f) If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

- (1) before the effective date of the impact fee ordinance the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and
- (2) after the effective date of the impact fee ordinance the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

*As added by P.L.221-1991, SEC.19. Amended by P.L.197-2016, SEC.123.*

#### **IC 36-7-4-1319**

##### **Amendment to ordinance or zone improvement plan**

Sec. 1319. (a) A unit shall amend a zone improvement plan to make adjustments in the nature, location, and cost of infrastructure and the timing or sequencing of infrastructure installations to respond to the nature and location of development occurring in the impact zone. Appropriate planning and analysis shall be carried out before an amendment is made to a zone improvement plan.

(b) A unit may not amend an impact fee ordinance if the amendment makes a significant change in an impact fee schedule or formula or if the amendment designates an impact zone or alters the boundary of a zone, unless a new or substantially updated zone improvement plan has been approved within the immediately preceding one (1) year period.

*As added by P.L.221-1991, SEC.20.*

#### **IC 36-7-4-1320**

##### **Ordinance; fee schedule and formula**

Sec. 1320. (a) An impact fee ordinance must include:

- (1) a schedule prescribing for each impact zone the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance; or
- (2) a formula for each impact zone by which the amount of the impact fee that is to be imposed for each infrastructure type covered by the ordinance may be derived.

(b) A schedule or formula included in an impact fee ordinance must provide an objective and uniform standard for calculating impact fees that allows fee payers to accurately predict the impact fees that will be imposed on new development.

*As added by P.L.221-1991, SEC.21.*

#### **IC 36-7-4-1321**

**Fee schedule or formula; requirements; limitations**

Sec. 1321. (a) An impact fee schedule or formula described in section 1320 of this chapter shall be prepared so that the impact fee resulting from the application of the schedule or formula to a development meets the requirements of this section. However, this section does not require that a particular methodology be used in preparing the schedule or formula.

(b) As used in this section, "impact costs" means a reasonable estimate, made at the time the impact fee is assessed, of the proportionate share of the costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development. The amount of impact costs may not include the costs of infrastructure of the applicable type needed to raise the current level of service in the impact zone to the community level of service in the impact zone for development that is existing at the time the impact fee is assessed.

(c) As used in this section, "nonlocal revenue" means a reasonable estimate, made at the time the impact fee is assessed, of revenue that:

- (1) will be received from any source (including but not limited to state or federal grants) other than a local government source; and
- (2) is to be used within the impact zone to defray the capital costs of providing infrastructure of the applicable type.

(d) As used in this section, "impact deductions" means a reasonable estimate, made at the time the impact fee is assessed, of the amounts from the following sources that will be paid during the ten (10) year period after assessment of the impact fee to defray the capital costs of providing infrastructure of the applicable types to serve a development:

- (1) Taxes levied by the unit or on behalf of the unit by an applicable infrastructure agency that the fee payer and future owners of the development will pay for use within the geographic area of the unit.
- (2) Charges and fees, other than fees paid by the fee payer under this chapter, that are imposed by any of the following for use within the geographic area of the unit:
  - (A) An applicable infrastructure agency.
  - (B) A governmental entity.
  - (C) A not-for-profit corporation created for governmental purposes.

Charges and fees covered by this subdivision include tap and availability charges paid for extension of services or the provision of infrastructure to the development.

(e) An impact fee on a development may not exceed:

- (1) impact costs; minus
- (2) the sum of nonlocal revenues and impact deductions.

*As added by P.L.221-1991, SEC.22.*

**IC 36-7-4-1322****Fee assessment date; increase or decrease in fees; developments against which fees may not be assessed; existing contracts**

Sec. 1322. (a) Except as provided in subsection (b), an impact fee ordinance must require that, if the fee payer requests, an impact fee on a development must be assessed not later than thirty (30) days after the earlier of:

- (1) the date the fee payer obtains an improvement location permit for the development; or
- (2) the date that the fee payer voluntarily submits to the unit a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the unit's zoning ordinance and shall contain reasonably sufficient detail for the unit to calculate the impact fee.

(b) An impact fee ordinance may provide that if a proposed development is of a magnitude that will require revision of the zone improvement plan in order to appropriately serve the new development, the unit shall revise the unit's zone improvement plan and shall assess an impact fee on a development not later than one hundred eighty (180) days after the earlier of the following:

- (1) The date on which the fee payer obtains an improvement location permit for the development.
- (2) The date on which the fee payer submits to the unit a development plan for a development and evidence that the property is properly zoned for the proposed development. The development plan must be in the form prescribed by the unit's zoning ordinance and must contain reasonably sufficient detail for the unit to calculate the impact fee.

(c) An impact fee assessed under subsections (a) or (b) may be increased only if the structural building permit has not been issued for the development and the requirements of subsection (d) are satisfied. In the case of a phased development, only a portion of an impact fee assessed under subsection (a) or (b) that is attributable to the portion of the development for which a permit has not been issued may be increased if the requirements of subsection (d) are satisfied.

(d) Unless the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure the development creates in the impact zone is significantly increased, an impact fee assessed under:

- (1) subsection (a)(1) or (b)(1) may not be increased for the period of the improvement location permit's validity; and
- (2) subsection (a)(2) or (b)(2) may not be increased for three (3) years.

(e) An impact fee assessed under subsection (a) or (b) shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the

amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(f) If the unit fails to assess an impact fee within the period required by subsection (a) or (b), the unit may not assess an impact fee on the development unless the development plan originally submitted for the development is materially and substantially changed.

(g) Notwithstanding other provisions in this chapter, a unit may not assess an impact fee against a development if:

(1) an improvement location permit has been issued for all or a part of a development before adoption of an impact fee ordinance that is in compliance with this chapter; and

(2) the development satisfies all of the following criteria:

(A) The development is zoned for commercial or industrial use before January 1, 1991.

(B) The development will consist primarily of new buildings or structures. As used in this clause, the term "new buildings or structures" does not include additions or expansions of existing buildings or structures.

(C) The parts of the development for which a structural building permit has not been issued are owned or controlled by the person that owned or controlled the development on January 1, 1991.

(D) A structural building permit is issued for the development not more than four (4) years after the effective date of the impact fee ordinance.

(E) The development is part of a common scheme of development that:

(i) involves land that is contiguous;

(ii) involves a plan for development that includes a survey of the land, engineering drawings, and a site plan showing the anticipated size, location, and use of buildings and the anticipated location of streets, sewers, and drainage;

(iii) if plan approval is required, resulted in an application being filed with an appropriate office, commission, or official of the unit before January 1, 1991, that resulted or may result in approval of any phase of the development plan referred to in item (ii);

(iv) has been diligently pursued since January 1, 1991;

(v) resulted before January 1, 1991, in a substantial investment in creating, publicizing, or implementing the common scheme of development; and

(vi) involved the expenditure of significant funds before January 1, 1991, for the provision of improvements, such as roads, sewers, water treatment facilities, water storage

facilities, water distribution facilities, drainage systems, or parks, that are on public lands or are available for other development in the area.

(h) Notwithstanding any other provision of this chapter, this chapter does not impair the validity of any contract between a unit and a fee payer that was:

- (1) entered into before January 1, 1991; and
- (2) executed in consideration of zoning amendments or annexations requested by the fee payer.

*As added by P.L.221-1991, SEC.23.*

#### **IC 36-7-4-1323**

##### **Fee due date; proration; repeal or lapse of ordinance**

Sec. 1323. (a) Except as provided in section 1324 of this chapter, an impact fee assessed in compliance with section 1322 of this chapter is due and payable on the date of issuance of the structural building permit for the new development on which the impact fee is imposed.

(b) For a phased development, an impact fee shall be prorated for purposes of payment according to the impact of the parcel for which a structural building permit is issued in relation to the total impact of the development. In accordance with section 1324 of this chapter, only the prorated portion of the assessed impact fee is due and payable on the issuance of the permit.

(c) If an impact fee ordinance is repealed, lapses, or becomes ineffective after the assessment of an impact fee on a development but before the issuance of the structural building permit for part or all of the development:

- (1) any part of the impact fee attributable to the part of the development for which a structural building permit has not been issued is void and is not due and payable, in the case of a phased development; and
- (2) the entire impact fee is void and is not due and payable, in the case of a development other than a phased development.

*As added by P.L.221-1991, SEC.24.*

#### **IC 36-7-4-1324**

##### **Ordinance; installment payment plan; fee upon permit issuance; interest; penalty for late payment**

Sec. 1324. (a) An impact fee ordinance must include an installment payment plan. The installment payment plan must at least offer a fee payer the option of paying part of an impact fee in equal installment payments if the impact fee is greater than five thousand dollars (\$5,000). In an installment plan under this section:

- (1) a maximum of five thousand dollars (\$5,000) or five percent (5%) of the impact fee, whichever is greater, may become payable on the date the structural building permit is issued for the development on which the fee is imposed;

(2) the first installment may not become due and payable less than one (1) year after the date the structural building permit is issued for the development on which the fee is imposed; and  
(3) the last installment may not be due and payable less than two (2) years after the date the structural building permit is issued for the development on which the fee is imposed.

(b) An impact fee ordinance may require an impact fee of five thousand dollars (\$5,000) or less to be paid in full on the date the structural building permit is issued for the development on which the impact fee is imposed.

(c) An impact fee ordinance may provide that a reasonable rate of interest, not to exceed the prejudgment rate of interest in effect at the time the interest accrues, may be charged if the fee payer elects to pay in installments. If interest is charged, the ordinance must provide that interest accrues only on the portion of the impact fee that is outstanding and does not begin to accrue until the date the structural building permit is issued for the development or the part of the development on which the impact fee is imposed.

(d) An impact fee ordinance may provide that if all or part of an installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty amount equal to ten percent (10%) of the installment amount that is overdue. If interest is charged under subsection (c), the interest shall be charged on the penalty amount.

*As added by P.L.221-1991, SEC.25.*

#### **IC 36-7-4-1325**

##### **Collection of unpaid fees; lien; receipt for payments**

Sec. 1325. (a) A unit may use any legal remedy to collect an impact fee imposed by the unit. A unit must bring an action to collect an impact fee and all penalties, costs, and collection expenses associated with a fee not later than ten (10) years after the fee or the prorated portion of the impact fee first becomes due and payable.

(b) On the date a structural building permit is issued for the development of property on which the impact fee is assessed, the unit acquires a lien on the real property for which the permit is issued. For a phased development, the amount of the lien may not exceed the prorated portion of the impact fee due and payable in one (1) or more installments at the time the structural building permit is issued.

(c) A lien acquired by a unit under this section is not affected by a sale or transfer of the real property subject to the lien, including the sale, exchange, or lease of the real property under IC 36-1-11.

(d) A lien acquired by a unit under this section continues for ten (10) years after the impact fee or the prorated portion of the impact fee becomes due and payable. However, if an action to enforce the lien is filed within the ten (10) year period, the lien continues until the termination of the proceeding.

(e) A holder of a lien of record on any real property on which an

impact fee is delinquent may pay the delinquent impact fee and any penalties and costs. The amount paid by the lien holder is an additional lien on the real property in favor of the lien holder and is collectible in the same manner as the original lien.

(f) If a person pays an impact fee assessed against any real property, the person is entitled to a receipt for the payment that is:

(1) on a form prescribed by the impact fee ordinance; and

(2) issued by a person designated in the impact fee ordinance.

*As added by P.L.221-1991, SEC.26.*

#### **IC 36-7-4-1326**

##### **Ordinance; special reduced rates for affordable housing development**

Sec. 1326. (a) An impact fee ordinance may provide for a reduction in an impact fee for housing development that provides sale or rental housing, or both, at a price that is affordable to an individual or a family earning less than eighty percent (80%) of the median income for the county in which the housing development is located. If the housing development comprises more than one (1) residential unit, the impact fee reduction shall apply only to the residential units that are affordable to an individual or a family earning less than eighty percent (80%) of the median income of the county.

(b) If the impact fee ordinance provides for a reduction in an impact fee under subsection (a), the ordinance must:

(1) contain a schedule or formula that sets forth the amount of the fee reduction for various types of housing development specified in subsection (a);

(2) require that, as a condition of receiving the fee reduction, the owner execute an agreement that:

(A) is binding for a period of at least five (5) years on the owner and subsequent owners; and

(B) limits the tenancy of residential units receiving the fee reduction to individuals or families who at the time the tenancy is initiated are earning less than eighty percent (80%) of the median income of the county;

(3) contain standards to be used in determining if a particular housing development specified in subsection (a) will receive a fee reduction; and

(4) designate a board or an official of the unit to conduct the hearing required by subsection (c).

(c) A fee reduction authorized by this section must be approved by a board or official of the unit at a public hearing.

*As added by P.L.221-1991, SEC.27.*

#### **IC 36-7-4-1327**

##### **Fee reduction; appeal procedures**

Sec. 1327. An impact fee ordinance must provide a procedure

through which the fee reduction decision made under section 1326 of this chapter may be appealed by the following persons:

- (1) The person requesting the fee reduction.
- (2) An infrastructure agency responsible for infrastructure of the applicable type for the impact zone in which the impact fee reduction is granted.

*As added by P.L.221-1991, SEC.28.*

#### **IC 36-7-4-1328**

##### **Fee reduction; complementary payment by granting unit**

Sec. 1328. A unit that provides a fee reduction under section 1326 of this chapter shall pay into the account or accounts established for the impact zone in which the fee was reduced an amount equal to the amount of the fee reduction.

*As added by P.L.221-1991, SEC.29.*

#### **IC 36-7-4-1329**

##### **Fund for impact fee collections; establishment; management; reports**

Sec. 1329. (a) A unit imposing an impact fee shall establish a fund to receive amounts collected under this series.

(b) Money in a fund established under subsection (a) at the end of the unit's fiscal year remains in the fund. Interest earned by the fund shall be deposited in the fund.

(c) The fiscal officer of the unit shall manage the fund according to the provisions of this series. The fiscal officer shall annually report to the unit's plan commission and to each infrastructure agency responsible for infrastructure in an impact zone. The report must include the following:

- (1) The amount of money in accounts established for the impact zone.
- (2) The total receipts and disbursements of the accounts established for the impact zone.

(d) A separate account shall be established in the fund for each impact zone established by the unit and for each infrastructure type within each zone. Interest earned by an account shall be deposited in that account.

*As added by P.L.221-1991, SEC.30.*

#### **IC 36-7-4-1330**

##### **Use of fees**

Sec. 1330. An impact fee collected under this series shall be used for the following purposes:

- (1) Providing funds to an infrastructure agency for the provision of new infrastructure that:
  - (A) is necessary to serve the new development in the impact zone from which the fee was collected; and
  - (B) is identified in the zone improvement plan.



(2) In an amount not to exceed five percent (5%) of the annual collections of an impact fee, for expenses incurred by the unit that paid for the consulting services that were used to establish the impact fee ordinance.

(3) Payment of a refund under section 1332 of this chapter.

(4) Payment of debt service on an obligation issued to provide infrastructure described in subdivision (1).

*As added by P.L.221-1991, SEC.31.*

#### **IC 36-7-4-1331**

##### **Infrastructure construction**

Sec. 1331. (a) An infrastructure agency shall, within the time described in the zone improvement plan, construct infrastructure for which:

(1) a zone improvement plan has been adopted;

(2) an impact zone has been established; and

(3) an impact fee has been collected.

(b) A unit may amend the unit's zone improvement plan, including the time provided in the plan for construction of infrastructure, only if the amount of expenditures provided for the construction of infrastructure in the original plan does not decrease in any year and the benefit to the overall impact zone does not decrease because of the amendment.

*As added by P.L.221-1991, SEC.32.*

#### **IC 36-7-4-1332**

##### **Impact fee refunds**

Sec. 1332. (a) A fee payer is entitled to a refund of an impact fee if an infrastructure agency:

(1) has failed to complete a part of the infrastructure for which the impact fee was imposed not later than:

(A) twenty-four (24) months after the time described in section 1331 of this chapter; or

(B) a longer time as is reasonably necessary to complete the infrastructure if unforeseeable and extraordinary circumstances that are not in whole or in part caused by the unit have delayed the construction;

(2) has unreasonably denied the fee payer the use and benefit of the infrastructure during the useful life of the infrastructure; or

(3) has failed within the earlier of:

(A) six (6) years after issuance of the structural building permit; or

(B) the anticipated infrastructure completion date as specified in the zone improvement plan existing on the date the impact fee was collected;

to make reasonable progress toward completion of the specific infrastructure for which the impact fee was imposed or thereafter fails to make reasonable progress toward completion.

(b) An application for a refund under subsection (a) must be filed with the unit that imposed the impact fee not later than two (2) years after the right to a refund accrues. A unit shall issue a refund in part or in full or shall reject the application for refund not later than thirty (30) days after receiving an application for a refund.

(c) If a unit approves a refund in whole or in part, the unit shall pay the amount approved, plus interest from the date on which the impact fee was paid to the date the refund is issued. The interest rate shall be the same rate as the rate that the unit's impact fee ordinance provides for impact fee payments paid in installments.

(d) If a unit rejects an application for refund or approves only a partial refund, the fee payer may appeal not later than sixty (60) days after the rejection or partial approval to the unit's impact fee review board established under section 1338 of this chapter by filing with the board an appeal on a form prescribed by the board. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(e) An impact fee ordinance shall designate the employee or official of the unit who is responsible for accepting, rejecting, and paying a refund and interest.

(f) A unit's impact fee review board shall hold a hearing on all appeals for a refund under this section. The hearing shall be held not later than forty-five (45) days after the application for appeal is filed with the board. A unit's impact fee review board shall provide notice of the application for refund to the infrastructure agency responsible for the infrastructure for which the impact fee was imposed.

(g) An impact fee review board holding a hearing under subsection (f) shall determine the amount of a refund that shall be made to the fee payer from the account established for the infrastructure for which the fee was imposed. A refund ordered by the board must include interest from the date the impact fee was paid to the date the refund is issued at the same rate the ordinance provides for impact fee payments paid in installments.

(h) A party aggrieved by a final decision of an impact fee review board in a hearing under subsection (f) may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo.

*As added by P.L.221-1991, SEC.33.*

### **IC 36-7-4-1333**

#### **Impact fees; appeal of amount before impact review board; judicial review; effect on pending fee payments**

Sec. 1333. (a) A person against whom an impact fee has been assessed may appeal the amount of the impact fee. A unit may not deny issuance of a structural building permit on the basis that an impact fee has not been paid or condition issuance of the permit on the payment of an impact fee. However, in the case of an impact fee

of one thousand dollars (\$1,000) or less a unit may require a fee payer to:

- (1) pay the impact fee; or
- (2) bring an appeal under this section;

before the unit issues a structural building permit for the development for which the impact fee was assessed.

(b) A person must file a petition for a review of the amount of an impact fee with the unit's impact fee review board not later than thirty (30) days after issuance of the structural building permit for the development for which the impact fee was assessed. An impact fee ordinance may require a petition to be accompanied by payment of a reasonable fee not to exceed one hundred dollars (\$100). A fee payer shall receive a full refund of the filing fee if:

- (1) the fee payer prevails;
- (2) the amount of the impact fee or the reductions or credits against the fee is adjusted by the unit, the board, or a court; and
- (3) the body ordering the adjustment finds that the amount of the fee, reductions, or credits were arbitrary or capricious.

(c) A unit's impact fee review board shall prescribe the form of the petition for review of an impact fee under subsection (b). The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person. The form must require the petitioner to specify:

- (1) a description of the new development on which the impact fee has been assessed;
- (2) all facts related to the assessment of the impact fee; and
- (3) the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in this series.

(d) A unit's impact fee review board shall prescribe a form for a response by a unit to a petition for review under this section. The board shall issue instructions for completion of the form. The form must require the unit to indicate:

- (1) agreement or disagreement with each item indicated on the petition for review under subsection (c); and
- (2) the reasons the unit believes that the amount of the fee assessed is correct.

(e) Immediately upon the receipt of a timely filed petition on the form prescribed under subsection (c), a unit's impact fee review board shall provide a copy of the petition to the unit assessing the impact fee. The unit shall not later than thirty (30) days after the receipt of the petition provide to the board a completed response to the petition on the form prescribed under subsection (d). The board shall immediately forward a copy of the response form to the petitioner.

(f) An impact fee review board shall:

- (1) review the petition and the response submitted under this section; and

(2) determine the appropriate amount of the impact fee not later than thirty (30) days after submission of both petitions.

(g) A fee payer aggrieved by a final determination of an impact fee review board may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo. If the assessment of a fee is vacated by judgment of the court, the assessment of the impact fee shall be remanded to the board for correction of the impact fee assessment and further proceedings in accordance with law.

(h) If a petition for a review or an appeal of an impact fee assessment is pending, the impact fee is not due and payable until after the petition or appeal is finally adjudicated and the amount of the fee is determined.

*As added by P.L.221-1991, SEC.34.*

#### **IC 36-7-4-1334**

##### **Ordinance; appeal provision for amount of fees**

Sec. 1334. An impact fee ordinance must set forth the reasons for which an appeal of the amount of an impact fee may be made. The impact fee ordinance must provide that an appeal of the amount of an impact fee may be made for the following reasons:

(1) A fact assumption used in determining the amount of an impact fee is incorrect.

(2) The amount of the impact fee is greater than the amount allowed under sections 1320, 1321, and 1322 of this chapter.

*As added by P.L.221-1991, SEC.35.*

#### **IC 36-7-4-1335**

##### **Fee payer credits; infrastructure or improvements; amount of credit**

Sec. 1335. (a) As used in this section, "improvement" means an improvement under section 1313(2) of this chapter or a site improvement, land, or real property interest as follows:

(1) That is to be used for at least one (1) of the infrastructure purposes specified in section 1309 of this chapter.

(2) That is included in or intended to be used relative to an infrastructure type for which the unit has imposed an impact fee in the impact zone.

(3) That is not a type of improvement that is uniformly required by law or rule for the type of development on which the impact fee has been imposed.

(4) That is or will be:

(A) public property; or

(B) furnished or constructed under requirements of the unit and is or will be available for use by other development in the area.

(5) That is beneficial to existing development and future development in the impact zone and is not beneficial to only

one (1) development.

(6) That either:

(A) allows the removal of a component of infrastructure planned for the impact zone;

(B) is a useful addition to the zone improvement plan; or

(C) is reasonably likely to be included in a future zone improvement plan for the impact zone.

(7) That is:

(A) constructed, furnished, or guaranteed by a bond or letter of credit under a request by an authorized official of the:

(i) applicable infrastructure agency; or

(ii) unit that imposed the impact fee; or

(B) required to be constructed or furnished under a written commitment that:

(i) is requested by an authorized official of the applicable infrastructure agency or the unit that imposed the impact fee;

(ii) concerns the use or developing of the development against which the impact fee is imposed; and

(iii) is made under section 1015 of this chapter.

(b) A fee payer is entitled to a credit against an impact fee if the owner or developer of the development constructs or provides:

(1) infrastructure that is an infrastructure type for which the unit imposed an impact fee in the impact zone; or

(2) an improvement.

(c) A fee payer is entitled to a credit under this section for infrastructure or an improvement that:

(1) is constructed or furnished relative to a development after January 1, 1989; and

(2) meets the requirements of this section.

(d) The amount of a credit allowed under this section shall be determined at the date the impact fee is assessed. However, if an assessment is not requested, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be:

(1) determined by the:

(A) person constructing or providing the infrastructure or improvement; and

(B) applicable infrastructure agency; and

(2) equal to the sum of the following:

(A) The cost of constructing or providing the infrastructure or improvement.

(B) The fair market value of land, real property interests, and site improvements provided.

(e) The amount of a credit may be increased or decreased after the date the impact fee is assessed if, between the date the impact fee is assessed and the date the structural building permit is issued, there is a substantial and material change in the cost or value of the

infrastructure or improvement that is constructed or furnished from the cost or value determined under subsection (d). However, at the time the amount of a credit is determined under subsection (d), the person providing the infrastructure or improvement and the applicable infrastructure agency may agree that the amount of the credit may not be changed. The person providing the infrastructure or improvement may waive the person's right to a credit under this section.

*As added by P.L.221-1991, SEC.36. Amended by P.L.126-2011, SEC.43.*

#### **IC 36-7-4-1336**

##### **Fee payer credits; petition to determine amount; proceeding before impact review board**

Sec. 1336. (a) If the parties cannot agree on the cost or fair market value under section 1335(d) of this chapter, the fee payer or the person constructing or providing the infrastructure or improvement may file a petition for determination of the amount of the credit with the unit's impact fee review board not later than thirty (30) days after the structural building permit is issued for the development on which the impact fee is imposed. A petition under this subsection may be made as part of an appeal proceeding under section 1334 of this chapter or may be made under this section.

(b) An impact fee review board shall prescribe the form of the petition for determination of the amount of a credit under this section. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(c) An impact fee review board shall prescribe a form for a response by the applicable infrastructure agency to a petition under this section for determination of a credit amount. The board shall issue instructions for completion of the form.

(d) Immediately after receiving a timely filed petition under this section for determination of a credit amount, an impact fee review board shall provide a copy of the petition to the applicable infrastructure agency. Not later than thirty (30) days after receiving a copy of the petition, the infrastructure agency shall provide to the board a response on the form prescribed under subsection (c). The board shall immediately provide the petitioner with a copy of the infrastructure agency's response.

(e) The impact fee review board shall:

- (1) review a petition and response filed under this section; and
- (2) determine the amount of the credit not later than thirty (30) days after the response is filed.

(f) A fee payer aggrieved by a final determination of an impact fee review board under this section:

- (1) may appeal to the circuit or superior court of the county in which the unit is located; and

(2) is entitled to a trial de novo.  
*As added by P.L.221-1991, SEC.37.*

#### **IC 36-7-4-1337**

##### **Ordinance; allocation of credits to fee payer provisions**

Sec. 1337. An impact fee ordinance shall do the following:

- (1) Establish a method for reasonably allocating credits to fee payers in situations in which the person providing infrastructure or an improvement is not the fee payer.
- (2) Allow the person providing infrastructure or an improvement to designate in writing a reasonable and administratively feasible method of allocating credits to future fee payers.

*As added by P.L.221-1991, SEC.38.*

#### **IC 36-7-4-1338**

##### **Impact fee review board; membership; powers and duties**

Sec. 1338. (a) Each unit that adopts an impact fee ordinance shall establish an impact fee review board consisting of three (3) citizen members appointed by the executive of the unit. A member of the board may not be a member of the plan commission. An impact fee ordinance must do the following:

- (1) Set the terms the members shall serve on the board.
- (2) Establish a procedure through which the unit's executive shall appoint a temporary replacement member meeting the qualifications of the member being replaced in the case of conflict of interest.

(b) An impact fee review board must consist of the following members:

- (1) One (1) member who is a real estate broker licensed in Indiana.
- (2) One (1) member who is an engineer licensed in Indiana.
- (3) One (1) member who is a certified public accountant.

(c) An impact fee review board shall review the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the following procedures:

- (1) The board shall fix a reasonable time for the hearing of appeals.
- (2) At a hearing, each party may appear and present evidence in person, by agent, or by attorney.
- (3) A person may not communicate with a member of the board before the hearing with intent to influence the member's action on a matter pending before the board.
- (4) The board may reverse, affirm, modify, or otherwise establish the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds. For purposes of this subdivision, the board has all the powers of the official of the unit from which the appeal is taken.

(5) The board shall decide a matter that the board is required to hear:

- (A) at the hearing at which the matter is first presented; or
- (B) at the conclusion of the hearing on the matter, if the matter is continued.

(6) Within five (5) days after making a decision, the board shall provide a copy of the decision to the unit and the fee payer involved in the appeal.

(7) The board shall make written findings of fact to support the board's decision.

*As added by P.L.221-1991, SEC.39.*

### **IC 36-7-4-1339**

#### **Declaratory relief; challenge of ordinance**

Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance if the development occurs on the property.

(b) A person may seek to:

- (1) have a court determine under IC 34-26-1 any question of construction or validity arising under the impact fee ordinance; and
- (2) obtain a declaration of rights, status, or other legal relations under the ordinance.

(c) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

- (1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.
- (2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.
- (3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section 1318(c) of this chapter.
- (4) The unit has not complied with the requirements of section 1318(f) of this chapter.
- (5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.
- (6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.
- (7) The impact fee ordinance imposes on new development fees that are excessive in relation to the infrastructure needs created by the new development.
- (8) The impact fee ordinance does not allow for reasonable credits to fee payers.



(9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

*As added by P.L.221-1991, SEC.40. Amended by P.L.1-1998, SEC.206.*

#### **IC 36-7-4-1340**

##### **Ordinance; effective date; duration; replacement**

Sec. 1340. (a) An impact fee ordinance may take effect not earlier than six (6) months after the date on which the impact fee ordinance is adopted by a legislative body.

(b) An impact fee may not be collected under an impact fee ordinance more than five (5) years after the effective date of the ordinance. However, a unit may adopt a replacement impact fee ordinance if the replacement impact fee ordinance complies with the provisions of this series.

*As added by P.L.221-1991, SEC.41.*

#### **IC 36-7-4-1341**

##### **Delay of new development pending fee process**

Sec. 1341. A unit may not prohibit or delay new development to wait for the completion of all or a part of the process necessary for the development, adoption, or updating of an impact fee.

*As added by P.L.221-1991, SEC.42.*

#### **IC 36-7-4-1342**

##### **Application of 1300 Series to certain towns; expiration of provision**

Sec. 1342. The general assembly finds that the powers of a local governmental unit to permit and provide for infrastructure are not limited by the provisions of this chapter except as expressly provided in this chapter.

*As added by P.L.221-1991, SEC.43.*

#### **IC 36-7-4-1400**

##### **1400 Series—Development Plans; application of certain amendments to chapter**

Sec. 1400. (a) This section and sections 1401, 1401.5, 1402, 1403, 1404, 1405, and 1406 of this chapter apply only to development plans initially submitted after December 31, 1995.

(b) This series (sections 1400 through 1499 of this chapter) may be cited as follows: 1400 SERIES—DEVELOPMENT PLANS.

*As added by P.L.320-1995, SEC.22. Amended by P.L.220-2011, SEC.662.*

#### **IC 36-7-4-1401**

##### **"Development requirement" defined**

Sec. 1401. As used in this series, "development requirement" means a requirement:

- (1) for development of real property in a zoning district for which a development plan is required; and
- (2) that conforms to section 1403 of this chapter.

*As added by P.L.320-1995, SEC.23.*

#### **IC 36-7-4-1401.5**

##### **Power of legislative body to designate zoning districts where plan required**

Sec. 1401.5. (a) A legislative body may, in a zoning ordinance, designate zoning districts in which a development plan is required. If a zoning district is designated under this section, the plan commission must approve or disapprove a development plan under this series for real property within the zoning district.

(b) The plan commission has exclusive authority to approve or disapprove a development plan for real property located within the plan commission's jurisdiction.

*As added by P.L.320-1995, SEC.24. Amended by P.L.126-2011, SEC.44.*

#### **IC 36-7-4-1402**

##### **Designation by zoning ordinance**

Sec. 1402. (a) This section applies if a zoning district is designated in a zoning ordinance under section 1401.5(a) of this chapter.

(b) In the zoning ordinance, the legislative body adopting the ordinance must specify the following:

- (1) Development requirements that must be satisfied before the plan commission may approve a development plan.
- (2) Plan documentation and supporting information that must be supplied to the plan commission before the plan commission may approve a development plan.
- (3) Development requirements for approval of a development plan that the plan commission may waive.
- (4) Conditions under which the plan commission may waive development requirements for approval of a development plan.
- (5) Procedures for submission and review of a development plan, including the nature or type of application, fees, notice, hearing, amendment, and other matters relevant to review.

(c) In the zoning ordinance, the legislative body may authorize the following to review and approve a development plan:

- (1) The plan commission staff.
- (2) A hearing examiner or committee of the plan commission designated under section 402(d) of this chapter.

*As added by P.L.320-1995, SEC.25.*

#### **IC 36-7-4-1403**

**Requisites of zoning ordinance**

Sec. 1403. (a) The development requirements that must be specified under section 1402(b)(1) of this chapter may include the following:

- (1) Compatibility of the development with surrounding land uses.
- (2) Availability and coordination of water, sanitary sewers, storm water drainage, and other utilities.
- (3) Management of traffic in a manner that creates conditions favorable to health, safety, convenience, and the harmonious development of the community.
- (4) Building setback lines.
- (5) Building coverage.
- (6) Building separation.
- (7) Vehicle and pedestrian circulation.
- (8) Parking.
- (9) Landscaping.
- (10) Height, scale, materials, and style of improvements.
- (11) Signage.
- (12) Recreation space.
- (13) Outdoor lighting.
- (14) Other requirements considered appropriate by the legislative body.

(b) The development requirements specified under subsection (a)(3) concerning the management of traffic may ensure the following:

- (1) That the design and location of proposed street and highway access points minimize safety hazards and congestion.
- (2) That the capacity of adjacent streets and highways is sufficient to safely and efficiently accept traffic that will be generated by the new development.
- (3) That the entrances, streets, and internal traffic circulation facilities in the development plan are compatible with existing and planned streets and adjacent developments.

(c) The plan documentation and supporting information that must be supplied under section 1402(b)(2) of this chapter may include the following:

- (1) The location and character of the following:
  - (A) Existing and proposed primary structures and accessory structures.
  - (B) Utilities.
  - (C) Signage.
  - (D) Landscaping.
- (2) The nature and intensity of uses in the development.
- (3) The condition and size of public thoroughfares and parking, vehicle, and pedestrian facilities.
- (4) The location and capacity of drainage facilities and sewer systems serving the development.

(5) Other information considered appropriate by the legislative body.

(d) In specifying development requirements or plan documentation and supporting information for development plan approval under section 1402(b)(1) through 1402(b)(2) of this chapter, the zoning ordinance may incorporate by reference provisions in the subdivision control ordinance.

*As added by P.L.320-1995, SEC.26.*

#### **IC 36-7-4-1404**

##### **Review and appeal**

Sec. 1404. (a) If a zoning ordinance designates a zoning district under section 1401.5(a) of this chapter and authority is delegated under section 1402(c) of this chapter, the zoning ordinance must describe the following:

- (1) The duties of the plan commission staff, hearing examiner, or committee in reviewing a development plan.
- (2) The procedures for review of a development plan by the plan commission staff, hearing examiner, or committee.
- (3) The procedures for an appeal to the plan commission of a decision made by the plan commission staff, hearing examiner, or committee.

(b) A plan commission staff, hearing examiner, or committee to which authority has been delegated under section 1402(c) of this chapter may make a decision concerning a development plan without a public hearing if the zoning ordinance provides for an appeal of the decision directly to the plan commission.

(c) The zoning ordinance may provide for a hearing procedure for review of a development plan that is similar to the hearing procedure for review of subdivision plats under the 700 series of this chapter. If such a procedure is adopted, the zoning ordinance may provide that public notice and hearing are not required for secondary review of a development plan. If notice and hearing are not required for secondary review of a development plan, the primary approval or disapproval of a development plan is a final decision of the plan commission that may be reviewed only as provided in section 1016 of this chapter.

*As added by P.L.320-1995, SEC.27.*

#### **IC 36-7-4-1405**

##### **Powers and duties of plan commission**

Sec. 1405. (a) The plan commission shall review a development plan to determine if the development plan:

- (1) is consistent with the comprehensive plan; and
- (2) satisfies the development requirements specified in the zoning ordinance under sections 1402 and 1403 of this chapter.

(b) The plan commission may do the following:

- (1) Impose conditions on the approval of a development plan if

the conditions are reasonably necessary to satisfy the development requirements specified in the zoning ordinance for approval of the development plan.

(2) Provide that approval of a development plan is conditioned on the furnishing to the plan commission of a bond or written assurance that:

(A) guarantees the timely completion of a proposed public improvement in the proposed development; and

(B) is satisfactory to the plan commission.

(3) Permit or require the owner of real property to make a written commitment under section 1015 of this chapter.

*As added by P.L.320-1995, SEC.28. Amended by P.L.126-2011, SEC.45.*

#### **IC 36-7-4-1406**

##### **Written findings constitute final decision**

Sec. 1406. (a) A plan commission shall make written findings concerning each decision to approve or disapprove a development plan. The zoning ordinance must designate an official who is responsible for signing written findings of the plan commission.

(b) Except as provided in section 1404(c) of this chapter, a decision of the plan commission approving or disapproving a development plan or a decision made under section 1405(b) of this chapter is a final decision of the plan commission that may be reviewed only as provided in section 1016 of this chapter.

*As added by P.L.320-1995, SEC.29.*

#### **IC 36-7-4-1500**

##### **1500 Series—Planned Unit Development**

Sec. 1500. This series (sections 1500 through 1599 of this chapter) may be cited as follows: 1500 SERIES—PLANNED UNIT DEVELOPMENT.

*As added by P.L.320-1995, SEC.30.*

#### **IC 36-7-4-1501**

##### **"Development requirement" defined**

Sec. 1501. As used in this series, "development requirement" means a requirement:

(1) for development of real property in a planned unit development district that must be met; and

(2) that conforms to section 1508 of this chapter.

*As added by P.L.320-1995, SEC.31.*

#### **IC 36-7-4-1502**

##### **"Planned unit development district" defined**

Sec. 1502. As used in this series, "planned unit development district" means a zoning district for which a PUD district ordinance must be adopted under this series.

*As added by P.L.320-1995, SEC.32.*

#### **IC 36-7-4-1503**

##### **"PUD district ordinance" defined**

Sec. 1503. As used in this series, "PUD district ordinance" means a zoning ordinance that does the following:

- (1) Designates a parcel of real property as a planned unit development district.
- (2) Specifies uses or a range of uses permitted in the planned unit development district.
- (3) Specifies development requirements in the planned unit development district.
- (4) Specifies the plan documentation and supporting information that may be required.
- (5) Specifies any limitation applicable to a planned unit development district.
- (6) Meets the requirements of this series.

*As added by P.L.320-1995, SEC.33.*

#### **IC 36-7-4-1504**

##### **Zoning ordinances**

Sec. 1504. (a) A zoning ordinance may provide for and regulate planned unit development.

(b) A zoning ordinance that provides for and regulates planned unit development must meet the requirements of this series.

(c) A zoning ordinance that meets the requirements of this series is the exclusive means for exercising zoning control over planned unit development.

*As added by P.L.320-1995, SEC.34.*

#### **IC 36-7-4-1505**

##### **Real property zoned by PUD district ordinance**

Sec. 1505. (a) A planned unit development is allowed only for real property zoned to be a planned unit development district.

(b) A planned unit development district is established by the adoption of a PUD district ordinance.

(c) Except as provided in section 1511 of this chapter, the legislative body shall adopt and amend a PUD district ordinance in the same manner as a zone map change that is initiated under section 602(c)(1)(B) of this chapter is adopted or amended. The legislative body may not adopt or amend a PUD district ordinance unless a zoning ordinance that meets the requirements of section 1506 of this chapter is in effect.

*As added by P.L.320-1995, SEC.35.*

#### **IC 36-7-4-1506**

##### **Text amendment**

Sec. 1506. Before a PUD district ordinance may be adopted, a text

amendment to the zoning ordinance must be adopted. The text amendment must do all of the following:

- (1) Specify any limitation on planned unit development in the jurisdiction.
- (2) Specify standards, requirements, and procedures that:
  - (A) are consistent with this series; and
  - (B) govern the establishment and administration of planned unit development districts;  
including any appropriate regulation of reviews and the consideration of approvals and modifications to planned unit development districts under section 1511 of this chapter.

*As added by P.L.320-1995, SEC.36.*

#### **IC 36-7-4-1507**

##### **Legislative act**

Sec. 1507. The adoption and amendment of a PUD district ordinance is a legislative act.

*As added by P.L.320-1995, SEC.37.*

#### **IC 36-7-4-1508**

##### **Use of other authorized requirements**

Sec. 1508. Development requirements specified in a PUD district ordinance may:

- (1) use requirements, restrictions, provisions, and standards authorized under section 601(d)(2) of this chapter; and
- (2) specify development requirements authorized under section 1403 of this chapter.

*As added by P.L.320-1995, SEC.38.*

#### **IC 36-7-4-1509**

##### **Requirements of district ordinance**

Sec. 1509. (a) A PUD district ordinance must do one (1) of the following with respect to all, or each different part, of a planned unit development:

- (1) Express in general terms the development requirements that apply.
- (2) Express in detailed terms the development requirements that apply.

(b) If development requirements are expressed in general terms under subsection (a)(1):

- (1) secondary review of the PUD district ordinance must be conducted under subsection (c); and
- (2) the zoning ordinance or the PUD district ordinance must specify any plan documentation or supporting information that must be supplied in connection with secondary review under subsection (c).

(c) Secondary review of a PUD district ordinance:

- (1) may be conducted by the legislative body or by the person

or other body given the authority to conduct secondary review under section 1511(a) of this chapter; and

(2) must be conducted in accordance with procedures established in the zoning ordinance.

(d) The person or body conducting secondary review under subsection (c) shall do the following:

(1) Consider the development requirements expressed in general terms under subsection (a)(1).

(2) If:

(A) applicable development requirements expressed in general terms under subsection (a)(1) are satisfied; and

(B) applicable requirements in the zoning ordinance are satisfied;

grant secondary approval of the PUD district ordinance.

(3) Express in detailed terms any other development requirements that will apply to the planned unit development.

(4) Specify any plan documentation or supporting information that must be supplied before an improvement location permit may be issued for development of real property in the planned unit development district.

(e) If development requirements are expressed in detailed terms under subsection (a)(2), the zoning ordinance or the PUD district ordinance must specify any plan documentation or supporting information that must be supplied before an improvement location permit may be issued for development of real property in the planned unit development district.

*As added by P.L.320-1995, SEC.39.*

#### **IC 36-7-4-1510**

##### **Written text, plan, or other drawing allowed**

Sec. 1510. A PUD district ordinance may employ:

(1) written text;

(2) a plan or other drawing; or

(3) any combination of the items listed in this section;

in specifying the permitted uses and development requirements that apply to a planned unit development district.

*As added by P.L.320-1995, SEC.40.*

#### **IC 36-7-4-1511**

##### **Power of legislative body to delegate authority**

Sec. 1511. (a) The legislative body may, in the zoning ordinance, delegate authority to conduct secondary review of a PUD district ordinance under section 1509(c) of this chapter.

(b) The legislative body may, in the zoning ordinance, delegate authority to modify permitted uses or development requirements that are specified in a PUD district ordinance.

(c) The legislative body may, in the zoning ordinance, delegate the authority to conduct secondary reviews and grant approvals under



subsection (a) and to make modifications under subsections (b) and (i) to any of the following:

(1) The plan commission.

(2) A hearing examiner or committee designated by the plan commission under section 402(d) of this chapter.

(3) At least one (1) employee designated by the plan commission.

(d) If authority is delegated under subsection (c)(1), the zoning ordinance may provide for an appeal to the legislative body of the decision of the plan commission.

(e) If authority is delegated under subsection (c)(2) or (c)(3), the zoning ordinance must provide for an appeal to the legislative body or the plan commission of the decision of the hearing examiner, committee, employee, or group of employees.

(f) If the zoning ordinance provides for an appeal under subsection (d) or (e), the zoning ordinance must specify the appeal procedure.

(g) If authority to conduct secondary reviews is delegated under subsection (a), the legislative body must establish the following in the zoning ordinance:

(1) The nature of the proceedings required for conducting secondary review.

(2) The type of notice, if any, that must be given.

(h) Except as provided in subsection (i), if authority to make modifications in permitted uses or development requirements is delegated under subsection (b), a public hearing must be held before a modification is made. A hearing under this subsection must be conducted in the manner established by the legislative body in the zoning ordinance. Notice of the hearing must be given in the same manner as notice is given under section 604(b) and 604(c) of this chapter.

(i) The legislative body may define in the zoning ordinance minor modifications that may be made without a public hearing under subsection (h). The legislative body must establish in the zoning ordinance the nature of the proceedings and any notice required for the making of a minor modification under this subsection.

(j) The legislative body may, in the zoning ordinance, delegate authority to the plan commission to establish rules governing the nature of the proceedings and any notice required to conduct secondary review, grant an approval, or make a modification under this section.

(k) A decision of the plan commission to grant or deny an approval or a modification under this section, whether made after an original hearing or the hearing of an appeal, is a final decision that may be reviewed under section 1016 of this chapter.

*As added by P.L.320-1995, SEC.41.*

## **IC 36-7-4-1512**

**Power of legislative body to adopt or amend ordinance**

Sec. 1512. (a) When adopting or amending a PUD district ordinance, the legislative body of a unit may do the following:

- (1) Impose reasonable conditions on a proposed planned unit development.
- (2) Condition issuance of an improvement location permit on the furnishing of a bond or a satisfactorily written assurance guaranteeing the timely completion of a proposed public improvement in a planned unit development or serving a planned unit development.
- (3) Allow or require an owner of real property to make a written commitment in the manner authorized under section 1015 of this chapter.

(b) When recommending adoption of a PUD district ordinance to the legislative body, granting an approval under section 1511 of this chapter, or making a modification under section 1511(b) of this chapter, the bodies or persons authorized under section 1511(c) of this chapter may:

- (1) impose the conditions described in subsection (a)(1) and (a)(2); and
- (2) allow or require a written commitment as authorized under section 1015 of this chapter.

*As added by P.L.320-1995, SEC.42. Amended by P.L.126-2011, SEC.46.*

**IC 36-7-4-1513****Platting procedure**

Sec. 1513. The procedure for platting a parcel of real property that is zoned as a planned unit development district under this series is the same as the procedure described in the 700 series of this chapter for other platting.

*As added by P.L.320-1995, SEC.43.*

**IC 36-7-4-1600****1600 Series-Judicial review**

Sec. 1600. This series (sections 1600 through 1699 of this chapter) may be cited as follows: 1600 SERIES—JUDICIAL REVIEW.

*As added by P.L.126-2011, SEC.47.*

**IC 36-7-4-1601****Exclusive means for judicial review of zoning decisions**

Sec. 1601. (a) This series establishes the exclusive means for judicial review of zoning decisions as described in section 1003 or 1016 of this chapter, made by a board of zoning appeals, legislative body, plan commission, preservation commission, or zoning administrator (referred to as the "board" in this series).

(b) A legislative act is not subject to judicial review under this

series.

*As added by P.L.126-2011, SEC.48.*

### **IC 36-7-4-1602**

#### **Initiation of judicial review; required showing**

Sec. 1602. (a) Judicial review of a zoning decision is initiated by filing a petition for review in the appropriate court.

(b) Only a person who qualifies under:

- (1) section 1603 of this chapter concerning standing;
- (2) section 1604 of this chapter concerning exhaustion of administrative remedies;
- (3) section 1605 of this chapter concerning the time for filing a petition for review; and
- (4) section 1613 of this chapter concerning the time for filing the board record for review;

is entitled to judicial review of a final zoning decision.

(c) A person is entitled to judicial review of a nonfinal zoning decision only if the person establishes both of the following:

- (1) Immediate and irreparable harm.
- (2) No adequate remedy exists at law. The failure of a person to comply with the procedural requirements of this chapter may not be the basis for a finding of an inadequate remedy at law.

*As added by P.L.126-2011, SEC.49.*

### **IC 36-7-4-1603**

#### **Standing**

Sec. 1603. (a) The following have standing to obtain judicial review of a zoning decision:

- (1) A person to whom the zoning decision is specifically directed.
- (2) A person aggrieved by the zoning decision who participated in the board hearing that led to the decision, either:
  - (A) by appearing at the hearing in person, by agent, or by attorney and presenting relevant evidence; or
  - (B) by filing with the board a written statement setting forth any facts or opinions relating to the decision.
- (3) A person otherwise aggrieved or adversely affected by the zoning decision.

(b) A person has standing under subsection (a)(3) only if:

- (1) the zoning decision has prejudiced or is likely to prejudice the interests of the person;
- (2) the person was eligible for an initial notice of a hearing under this chapter, was not notified of the hearing in substantial compliance with this chapter, and did not have actual notice of the hearing before the last date in the hearing that the person could object or otherwise intervene to contest the zoning decision;
- (3) the person's asserted interests are among those that the board

was required to consider when it made the challenged zoning decision; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the zoning decision.

*As added by P.L.126-2011, SEC.50.*

#### **IC 36-7-4-1604**

##### **Exhaustion of remedies**

Sec. 1604. (a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the board whose zoning decision is being challenged.

(b) A person who fails to timely object to a zoning decision or timely petition for review of a zoning decision within the period prescribed by this chapter waives the person's right to judicial review under this chapter.

*As added by P.L.126-2011, SEC.51.*

#### **IC 36-7-4-1605**

##### **Timeliness of petition for review**

Sec. 1605. A petition for review is timely only if the petition for review is filed not later than thirty (30) days after the date of the zoning decision that is the subject of the petition for judicial review.

*As added by P.L.126-2011, SEC.52.*

#### **IC 36-7-4-1606**

##### **Venue; rules of procedure; parties; motion to intervene**

Sec. 1606. (a) Venue is in the judicial district where the land affected by the zoning decision is located.

(b) If more than one (1) person may be aggrieved by the zoning decision, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who:

(1) was a petitioner or applicant at the hearing before the board;  
or

(2) is aggrieved by the zoning decision and entered a written appearance as an adverse party to the petitioner or applicant before the board hearing that led to the zoning decision, as described in section 920(h) of this chapter;

is a party to the petition for review.

(e) Any other person who participated, in the manner described in section 1603(a)(2) of this chapter, in the board hearing that led to the

zoning decision may, not later than five (5) days after the decision is made, file with the board a written request that the person receive notice of any petition for review that may be filed. The written request must include the person's full name and correct mailing address and a reference to the board's docket number relative to the zoning decision.

(f) Any person who has standing under section 1603(a)(2) or 1603(a)(3) of this chapter has an unconditional right to intervene in a proceeding for review. A motion to intervene in a proceeding for review shall be filed in the manner provided by the rules of procedure governing civil actions in courts.

*As added by P.L.126-2011, SEC.53.*

### **IC 36-7-4-1607**

#### **Petition for review; requirements**

Sec. 1607. (a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

- (1) The name and mailing address of the petitioner.
- (2) The name and mailing address of the board whose zoning decision is at issue.
- (3) Identification of the decision at issue, together with a copy, summary, or brief description of the decision.
- (4) Identification of persons who participated in any hearing, as described in section 1603(a)(2) of this chapter, that led to the decision.
- (5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 1602 of this chapter.
- (6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 1614 of this chapter.
- (7) A request for relief, specifying the type and extent of relief requested.

*As added by P.L.126-2011, SEC.54.*

### **IC 36-7-4-1608**

#### **Notice**

Sec. 1608. (a) A petitioner for judicial review shall serve a copy of the petition upon the board making the zoning decision in the manner provided by the rules of procedure governing civil actions in the courts. Service on the board must be made to the secretary, president, or chairperson of the board.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review:

- (1) to all parties to the petition for review, as described in section 1606(d) of this chapter; and

(2) to persons who, in the manner described in section 1606(e) of this chapter, filed with the board making the zoning decision written requests that they receive notice of any petition for review, according to the public records of the board. However, if the public records of the board show that the board received written requests for notice from more than three (3) persons, the petitioner shall give notice only to the first three (3) persons who requested notice according to those records. Notice to any additional persons who requested notice is not required.

(c) This section does not require the petitioner to name as parties to the petition for review the persons who must be given notice under subsection (b)(2).

*As added by P.L.126-2011, SEC.55.*

### **IC 36-7-4-1609**

#### **Petition for order staying zoning decision pending review**

Sec. 1609. (a) A person seeking judicial review may seek, by filing a verified petition, an order of the court staying the zoning decision pending review by the court. The court may enter an order staying the zoning decision pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the zoning decision appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the zoning decision if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars (\$500).

(b) If a petition for review concerns a revocation or suspension of a previously approved variance, exception, or use, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the zoning decision is approved on final determination, the revocation or suspension of the variance, exception, or use immediately becomes effective.

*As added by P.L.126-2011, SEC.56.*

### **IC 36-7-4-1610**

#### **Review of issue not previously raised**

Sec. 1610. A person may obtain judicial review of an issue that was not raised before the board, only to the extent that:

(1) the issue concerns whether a person who was required to be notified by this chapter or other law of a board hearing was notified in substantial compliance with this chapter or other law; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the zoning decision.

*As added by P.L.126-2011, SEC.57.*

#### **IC 36-7-4-1611**

##### **Review of facts confined to record**

Sec. 1611. Judicial review of disputed issues of fact must be confined to the board record for the zoning decision supplemented by additional evidence taken under section 1612 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the board.

*As added by P.L.126-2011, SEC.58.*

#### **IC 36-7-4-1612**

##### **Additional evidence; remand for additional factfinding or preparation of adequate record**

Sec. 1612. (a) The court may receive evidence, in addition to that contained in the board record for judicial review, only if the evidence relates to the validity of the zoning decision at the time the decision was made and is needed to decide disputed issues regarding one (1) or both of the following:

(1) Improper constitution as a decisionmaking body or grounds for disqualification of those making the zoning decision.

(2) Unlawfulness of procedure or of decisionmaking process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the board proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the board before final disposition of a petition for review with directions that the board conduct further factfinding or that the board prepare an adequate record, if:

(1) the board failed to prepare or preserve an adequate record;

(2) the board improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the zoning decision and the court determines that the new provision of law may control the outcome.

*As added by P.L.126-2011, SEC.59.*

#### **IC 36-7-4-1613**

##### **Transmission of board record to court; extension of time to file record; cost of copies and transcripts**

Sec. 1613. (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court, the petitioner shall transmit to the court the original or a certified copy of the board record for judicial review of the zoning decision, consisting of:

(1) any board documents expressing the decision;

- (2) other documents identified by the board as having been considered by the board before its decision and used as a basis for its decision; and
- (3) any other material described in this chapter or other law as the board record for the type of zoning decision at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible board within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the board making the zoning decision being reviewed shall prepare the board record for the petitioner. If part of the record has been preserved without a transcript, the board shall, if practicable, prepare a transcript for inclusion in the record transmitted to the court, except for parts that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

(d) Notwithstanding IC 5-14-3-8, the board shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-37-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

- (1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
- (2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 1612 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

*As added by P.L.126-2011, SEC.60.*

#### **IC 36-7-4-1614**

##### **Burden of demonstrating invalidity of zoning decision; grounds for relief**

Sec. 1614. (a) The burden of demonstrating the invalidity of a zoning decision is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of a zoning decision shall be determined in



accordance with the standards of review provided in this section, as applied to the decision at the time it was made.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 1615 of this chapter only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

*As added by P.L.126-2011, SEC.61.*

#### **IC 36-7-4-1615**

##### **Finding of prejudice; judicial action**

Sec. 1615. If the court finds that a person has been prejudiced under section 1614 of this chapter, the court may set aside a zoning decision and:

- (1) remand the case to the board for further proceedings; or
- (2) compel a decision that has been unreasonably delayed or unlawfully withheld.

*As added by P.L.126-2011, SEC.62.*

#### **IC 36-7-4-1616**

##### **Appeal of court's decision**

Sec. 1616. The court's decision on a petition for review of a zoning decision is appealable in accordance with the rules governing civil appeals from the courts.

*As added by P.L.126-2011, SEC.63.*